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Warner, John De Witt

Argument...in behalf of his bill "To provide a...

Washington

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ARGUMENT

OF

HON. JOHN DE WITT WARNER,

OF NEW YORK,

IN BEHALF OF HIS BILL "TO PROVIDE A SAFE AND ELASTIC BANK-NOTE CURRENCY"

(H. R. 5595),

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY

OF THE

HOUSE OF REPRESENTATIVES,

February 9, 12, 16, 23, and 27, 1894.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1894.

STATEMENT OF HON. JOHN DE WITT WARNER, A REPRESENTATIVE FROM THE STATE OF NEW YORK.

Mr. WARNER appeared before the committee in advocacy of the following bill.

[H. R. 5595.]

A BILL to provide for a safe and elastic bank-note currency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all acts and parts of acts imposing a tax of ten per centum on notes of State banks and State banking associations, or of national banking associations, either when used for circulation and paid out or when used for circulation or paid out, be, and the same are hereby, repealed as to all such notes as shall be issued under the provisions of this act.

SEC. 2. That State banks and State banking associations, when thereto authorized by the laws of the States in which they are respectively situate, and also national banking associations, may issue circulating notes subject to the following regulations, namely:

First. Such notes shall be printed in blank by the Comptroller of the Currency, who shall cause them to be printed in design so as plainly to show, (one) if such is the case, that they are issued by a national banking association; (two) the State, if any, under the law of which they are issued; and (three) the bank or banking association by which they are to be issued.

Second. No such notes printed in blank shall be furnished by the Comptroller of the Currency to any such bank or banking association unless he shall be satisfied, (one) if other than a national banking association, that, by the law of the State in which it is situate, the holders of the circulating notes issued under this Act of any such bank or banking association are given a paramount lien upon all its assets and the avails thereof in preference to any and all other claims whatsoever, subject to the necessary cost and expenses of administering the same, and that the shareholders of every such bank or banking association are held individually responsible for all of its outstanding circulation issued under this Act each to an amount equal to the par value of the shares held by him therein, together with any amount not paid up on such shares—this in addition to the amount invested in such shares; (two) that it has made adequate and convenient provision for the redemption of its circulating notes to be issued as provided in this Act, either at the capital city of the State in which it is situate or at some other city of such State which shall have been approved by the Comptroller of the Currency; (three) that the amount of its capital, paid up and then unimpaired, is not less than fifty thousand dollars, and that the aggregate amount of the face value of such notes printed in blank and furnished such bank or banking association, together with its circulation issued under the national banking Act, if it be a national banking association, and still outstanding, is not greater than seventy-five per centum of its capital stock, paid up and then unimpaired; and (four) that it is not in default in compliance with any provision of this Act.

Third. The circulating notes issued under this Act by a national banking association shall be, and hereby are, given a paramount lien upon all its assets and the avails thereof, subject to the necessary costs and expenses of administering the same, except such of the avails of the bonds of the United States deposited to secure its circulation as may be sufficient to redeem such circulation issued under the national banking Act; and the shareholders of every national banking association shall be held individually responsible for all its outstanding circulation issued under this Act, each to an amount equal to the par value of the shares held by him therein—this in addition to the amount invested in such shares.

Fourth. All such notes, as aforesaid, once delivered by the Comptroller of the Currency to any such bank or banking association, shall be considered as outstanding until destroyed by him and registered as so destroyed.

Fifth. Every such bank or banking association, which is not a national banking association, shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such bank or banking asso-

ciation, and further attested by the signatures of at least three of its directors, trustees, or associates, if so many there be. Each such report shall exhibit in detail and under appropriate heads the resources and liabilities of such bank or banking association at the close of business on any past day designated by him, and shall be transmitted to the Comptroller of the Currency within five days after the receipt of a request or requisition therefor from him, and, in the same form in which it is made to the Comptroller of the Currency, shall be published in a newspaper published in the place where such bank or banking association is established, or if there is no newspaper in the place, then in one published nearest thereto, at the expense of the bank or banking association; and such proof of publication shall be furnished as may be required by the Comptroller of the Currency. The Comptroller of the Currency shall also have power to call for special reports from any particular bank or banking association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.

Sixth. The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall, as often as shall be deemed necessary or proper, appoint a suitable person or persons to make an examination of the affairs of every bank or banking association not a national banking association issuing notes under the provisions of this act, who shall have power to make a thorough examination into all the affairs of such bank or banking association, and in so doing to examine any of the officers or agents thereof under oath, and shall make a full and detailed report of the condition of such bank or banking association to the Comptroller of the Currency. All persons appointed to be examiners of such banks or banking associations shall receive the same compensation as is accorded examiners of national banking associations for performing like services, which amounts shall be assessed by the Comptroller of the Currency upon and paid by the respective banks or banking associations so examined. But no person shall be appointed to examine the affairs of any bank or banking association of which he is a director or other officer.

Seventh. On receiving from the Comptroller of the Currency notes printed in blank, as aforesaid, except when such notes are in substitution for notes worn, defaced, mutilated, or otherwise rendered unfit for circulation, the bank or banking association receiving such notes shall, except as hereinafter provided, pay to the Comptroller of the Currency a special assessment of one-half of one per centum of the amount for which, at their face denomination, such notes are to be issued; and within thirty days from each first day of January thereafter each such bank or banking association shall, except as hereinafter provided, pay to the Comptroller of the Currency a further assessment of one-half of one per centum of the amount to which, at their face denomination, such notes issued by such bank or banking association more than one year previous shall remain outstanding; and from the assessments thus collected from any such bank or banking association shall first be paid any and all expenses specially chargeable against such bank or banking association incurred in carrying out the provisions of this act: *Provided*, That the assessment hereinbefore mentioned shall not be required of or paid by any bank or banking association whenever after payment therefrom of expenses as aforesaid there shall remain in the hands of the Comptroller of the Currency from previous assessments paid by such bank or banking association, free from liability, actual or contingent, for circulating notes issued under provisions of this act, either of banks or banking associations which have failed or of those which, in the opinion of the Comptroller of the Currency, are otherwise liable to become a charge thereupon, its proportion of the amount, after deducting all general expenses of carrying out this act not covered by receipts from revenue, as hereinafter provided, of at least three per centum of all circulation issued under the provisions of this act and still outstanding: *And provided further*, That such assessment shall not be required of or paid by any bank or banking association after the same shall have deposited with the Treasurer of the United States lawful money to redeem its circulating notes outstanding, as hereinafter provided. The avails of such assessments as aforesaid, so to be paid to the Comptroller of the Currency, shall constitute a guarantee fund for the ultimate redemption, after all other reasonably available assets liable therefor shall have been exhausted, of all circulation to be issued under this act. The Comptroller of the Currency may cause the guarantee fund hereinbefore mentioned, for the integrity and safe-keeping of which the United States shall be and continue to be responsible, to be invested in United States bonds, or, in his discretion, in such other securities as may produce the greatest amount of income consistent with safety; the revenue derived therefrom shall be used to defray the general expenses of the Bureau of the Comptroller of the Currency necessarily incurred in carrying out the provisions of this act. But nothing herein contained shall be construed as giving any bank or banking association the right to demand, receive, or draw any interest upon the amount it may have contributed to the guarantee fund hereinbefore mentioned, or upon any part thereof, or to any repayment of such amount or of any part thereof.

Eighth. Any such bank or banking association, or its receiver, assignee, or legal representative, may at any time deposit with the Treasurer of the United States lawful money of the United States equal to the amount of its outstanding circulation issued under this act, and thereafter the assets and stockholders or shareholders of such bank or banking association shall be free and discharged from any liability for or on account of any such circulation or its redemption; and when any such notes, for the redemption of which lawful money has been thus deposited, shall be presented to the Treasurer of the United States the same shall be redeemed by him in lawful money.

Ninth. No bank or banking association shall, either directly or indirectly, pledge or hypothecate, for any purpose whatsoever, any of its circulating notes issued under this act; any president, cashier, director, or other officer of any bank or banking association who shall knowingly violate the provisions of this section or who shall participate in or assent to any such violation shall be deemed guilty of a misdemeanor and shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than five years, or both.

Tenth. No person, firm, corporation, or association shall receive from any bank or banking association or national banking association any of its circulating notes issued under this act as security, or as collateral security, for any loan of money, or receive the custody or promise of custody of such notes as security, or as collateral security or consideration for any loan of money. Any person, firm, corporation, or association offending against the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not less than one hundred nor more than one thousand dollars, and a further sum equal to the value, at the face denominations, of the notes so received.

Eleventh. It shall be the duty of the Comptroller of the Currency to receive worn-out, mutilated, or defaced circulating notes issued under this act and, on due proof of the destruction of any such circulating notes, to deliver to the bank or banking association issuing the same other blank circulating notes to an equal amount. Such worn-out, mutilated, or defaced notes, after a memorandum has been entered in the proper books, as well as circulating notes which shall have been surrendered to be canceled, shall be destroyed by mutilation in the presence of four persons, one to be appointed by the Secretary of the Treasury, one by the Comptroller of the Currency, one by the Treasurer of the United States, and one by the bank or banking association whose notes are thus destroyed, under such regulations as the Secretary of the Treasury may prescribe. A certificate of such destruction, signed by the parties so appointed, shall be made in the books of the Comptroller of the Currency and a duplicate thereof forwarded to the bank or banking association whose notes are thus destroyed.

Twelfth. The provisions of sections fifty one hundred and eighty-seven, fifty-one hundred and eighty-eight, fifty-four hundred and fifteen, fifty-four hundred and thirty, fifty-four hundred and thirty-one, fifty-four hundred and thirty-two, fifty-four hundred and thirty-three, and fifty-four hundred and thirty-four of the Revised Statutes of the United States, so far as they are not inconsistent with the provisions of this act, are hereby made applicable in full force to the notes printed under the direction of the Comptroller of the Currency under the provisions of this act.

Thirteenth. The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall cause notes in blank, in convenient denominations, to be printed upon the distinctive or special paper which has been, or may hereafter be, adopted by the Secretary of the Treasury for printing United States notes, and such notes to be furnished to banks or banking associations under the limitations above provided; and shall cause to be registered each bank note delivered to any such bank or banking association, and shall also receive, receipt for, destroy, and register the destruction of any such notes which may be redelivered to him by any such bank or banking association or national banking association for such purposes; and shall cause to be assessed and collected, safely kept, invested, and used the special assessments for guaranty of circulation issued under this act; and shall co-operate with banks and banking associations and national banking associations in carrying into effect this act according to the true intent and meaning thereof; and for such purpose may adopt and promulgate such rules and regulations consistent with this act as, with such approval, he may consider proper; and shall report to Congress at each regular session thereof, within ten days from its assembly, his proceedings under this act, the rules or regulations which he may have adopted or promulgated, his recommendations in such regard, and any fact which he may deem of special interest or pertinence in this connection.

SEC. 3. That this act shall not be so construed as in any way to exempt national banking associations from any of the provisions of the law heretofore existing except in so far as such provisions are necessarily annulled by the express provisions of this act.

Mr. WARNER. Mr. Chairman and Gentlemen of the Committee: I shall endeavor to detain the committee as short a time as possible and shall try to be peculiarly brief, if in the treatment of such a subject one can be so, in the remarks which I shall make in advance of questions, this in order, without troubling the committee any more than is necessary, to leave as much time as is possible for the discussion of such points as may be raised by questions. I take it that it is in such a way we shall more probably reach the particular matters which several members of the committee may think need elucidation.

We have had under discussion a number of bills which have been discussed to such an extent that I shall try to take advantage of that fact in shortening the discussion upon this bill. It will be remembered that the subcommittee having in charge bills referring to the matter of the repeal of the tax against State bank issues reported here some months ago a draft of a bill which was gone over more or less thoroughly in the committee.

Mr. HAUGEN. Let me ask if that was after the bill was printed?

Mr. WARNER. It was.

Mr. HAUGEN. Was your substitute printed?

Mr. WARNER. The draft that was printed was a report made, without committing individuals, by Mr. COX, Mr. HALL, and Mr. WARNER, and at the same time there was presented and printed with that report a bill that Mr. COX preferred——

Mr. COX. Let me interrupt you one moment. The subcommittee was composed of three Democrats. That bill was reported as the report of all of the committee and then my bill was reported with it as a report of the minority and they were all printed together.

Mr. WARNER. In view of the fact that a comparatively lengthy report of the committee has been somewhat discussed, it may possibly lead to more prompt understanding of what this bill is to say that it differs from that report mainly in two particulars.

In the first place, I have so changed the basis of the bill, by striking out all reference to other institutions than State banks, and State banking associations, and national banks, as to conform to the action which the committee did actually take before dropping the consideration of that draft, so that this bill refers only and exclusively to State banks, State banking associations, and national banking associations.

Mr. COX. In so far as the tax on the others is concerned, it is not disturbed in this bill?

Mr. WARNER. It is not disturbed at all. I have simply adopted the action of the committee in so far as it was definitely had in amendment of the details of the draft.

In one other respect the bill now presented by me differs materially from the draft reported from the subcommittee, and that is this: As presented by the subcommittee the draft was an attempt to repeal all Federal legislation which to that subcommittee seemed inconsistent with our views of the constitutional rights of the Federal Government. The result was, necessarily, to leave absolutely untouched and untrammeled by Federal legislation the question of what circulation should be permitted by any State within its own boundaries. It will be remembered, however, that before the committee ceased consideration of that draft, it had already ordered an amendment which trenched upon that principle. As explained at the time, it was regarded by every member of the subcommittee as utterly immaterial as a practical matter. No member of the subcommittee believed for a moment that a State currency forbidden by the Constitution of the United States from being

made a legal tender even within its State, and inhibited by express law of the Federal Government from any circulation whatever outside of that State, could either form any material part of our currency or be any obstacle in the way of any other currency.

Mr. JOHNSON, of Indiana. That is, you thought it was nugatory and could not float?

Mr. WARNER. Could not float. That being the case, and this committee having already by its action trenched upon the principle, it seemed to me best, as a practical matter, to confine this bill to such repeal of what some of us believed to be unconstitutional, unwise, and impolitic legislation, as would do away with the prohibitory tax against State-bank issues. With that end the first section of this bill is so changed from the draft presented by the subcommittee as to provide for neither more nor less than the repeal of the tax as to such currency alone as may be expressly authorized in the bill. Such is the distinction between this and the draft, which, having been discussed, is more or less familiar to every member of the committee.

Another bill discussed in this committee is the bill presented by the gentleman from Tennessee (Mr. COX), providing for what has been generally termed the "unconditional" repeal of the tax against State bank currency. This bill differs from that mainly in that this bill provides by affirmative legislation for permitting national banks to take advantage of the same freedom, that by the repeal of the tax against State bank currency, would be left to State banks and State banking associations. Let me explain. The material difference between the bill presented by the gentleman from Tennessee and the one which we are now discussing is not in the matter of more or less Federal supervision. In so far as there is any difference in that regard I want for myself to say I consider it immaterial. For, in my bill, as now presented, an attempt has been made to reduce the whole matter of Federal participation in carrying out the plan to such purely ministerial functions as scarcely to justify the claim that "supervision" is provided for; and, therefore, in that respect, I regard the difference between the bill introduced by the gentleman from Tennessee and that now presented by myself one of immaterial details rather than of principle.

Mr. JOHNSON, of Indiana. Where does the President of the United States stand on this bill?

Mr. WARNER. I have not the remotest idea.

In another regard, however, it differs very materially from the bill introduced by the gentleman from Tennessee. This difference does not appear upon the face of the bill, but is the result of circumstances, which in brief are as follows: When the national banking system was established and given a monopoly by the ten per cent prohibitory tax law against other bank issues, it was not done in order to suppress wild-cat currency. In those times "wild-cat" currency was frequently referred to, but with reference to former years, and other money—of 1831 and 1845, etc. The wild-cat currency question had solved itself long before 1866. The tax was not then imposed in order to keep out of circulation an unsound currency. It was imposed in order to drive out of circulation a currency that was so sound and of such good repute that the people would not take the national-bank bills as long as they were allowed to use the State-bank currency.

Mr. JOHNSON, of Indiana. Some of it was good and some of it was bad?

Mr. WARNER. At the time that this tax was taken off there was no suggestion made in either house of Congress of the badness, if you may

so call it, of the currency as a reason for the repeal; but it would of course be hard to make the statement that every bank throughout the United States was at that time in good repute.

Mr. BROSIUS. I want to state, in that connection, the arguments made in support of the national-bank bill refers very frequently to the bad money which had existed before that. That was one of the arguments employed.

Mr. WARNER. The arguments, so far as I recollect, invariably and, I am certain, generally, referred distinctly to bad money which had existed years and years and years before, and not to any assumed state of the currency which then needed remedying in that respect.

Mr. JOHNSON, of Indiana. I have always understood the reason that the national banking law was enacted was in order to get a uniform currency throughout the whole country, which, of course, involved the idea that there was a lack of uniformity, and also to furnish a market for the bonds.

Mr. WARNER. As stated by the gentlemen who presented the matter in Congress, commencing with Senator Sherman, before any bill was presented, it was in brief this: Inasmuch as the Government found it hard work to market its bonds or to find a circulation for its legal-tender paper, it was urged that a law should be passed which, in the precise language of Senator Sherman, should "destroy the banks," and compel the use of the national circulation thus given a monopoly.

Mr. BROSIUS. Because the channels of circulation were filled up with this State money.

The CHAIRMAN. Please let me state that in the State of Illinois we had our worst condition of State banks in 1861 and 1862, when we lost all of our currency, and the people were left suddenly without any circulating medium, and at that time there was a demand for the national currency and the greenbacks came in.

Mr. WARNER. I am very glad the gentleman calls attention to that—although I should have preferred to have it come in at a later time—because the experience of Illinois is one of the most instructive things that has ever been had in any State. Illinois attempted to get along with a banking system based upon special security. That special security consisted in a large measure of State bonds. With the slightest question of the security of these bonds—at a time when the general finances of Illinois was unshaken—at a time when, if the bills had been based upon the commercial paper of the merchants of Illinois, there was not a single one that would not have been promptly redeemed if sent in for redemption—a rumor, afterwards corroborated by the fact, that the special security was depreciated or worthless, caused those bills to be sent in so promptly for redemption that it absolutely ruined the currency system throughout Illinois. That is the case, and I am glad this point was called to my attention.

The CHAIRMAN. The assets of the banks, however, were left for the payment as well as the special securities?

Mr. WARNER. As a matter of actual fact were not the bills afterwards paid—the most of them?

The CHAIRMAN. The bill holders lost nearly all.

Mr. WARNER. If that is the case, then it was because the condition which I have just suggested was not enforced. If there was no general financial crash in Illinois, then if those bills had been based in reasonable proportion upon the actual commercial paper of Illinois—on the notes of the merchants who did not fail, as they did not, for on this the chairman will agree with me—there could have been no question either about the credit or currency of these bills or their redemption.

Mr. BROSIUS. Let me suggest to my friend that the assets of the banks were liable for those notes.

Mr. WARNER. I have not looked up the question as to what those assets consisted of. If the banks were allowed to issue currency beyond their capital, without limit in proportion to the good commercial paper they held, then the mere fact that the assets were liable for the bills is not a material condition——

Mr. BROSIUS. That is true.

Mr. WARNER. And to anyone who proposes such a system I have only to say that I consider it as bad as a special security system, which may go to pot without even the fact of insolvency being the cause.

But to return. I have stated that I consider immaterial the difference in regard to Federal supervision between the bill presented by the gentleman from Tennessee and that presented by myself. The material difference between them is this:

At the time when this 10 per cent tax was imposed, the great business of bank-note circulation was carried on through local banks, under State laws. The moment the tax was imposed, and monopoly began under the national-banking act, the greater number of the old strong State banks took out national-bank charters and are classed to-day as national banks, although their business, their solvency, their commercial connections, etc., are growths of the old State-bank system, and not in any way the result of or promoted by their becoming national banks, which was simply an incident in their history—an attempt to accommodate themselves to the circumstances forced upon them. More than this, in many States there are practically no other banks in existence than the national banks. Not merely that, but in a number of States, by constitutional prohibition or by inhibition of law passed in accord with their constitutions, there is no legal way by which any banks of issue, except national banks, can be established.

The great States of Texas, Missouri, and Illinois are in that category. The result is this, that, whereas if the tax had not been imposed originally, there is no question in my mind, any more than there is in the mind of the gentleman from Tennessee, but that we would now have an abundant and elastic currency supplied in a natural way; yet, since, in all of the States, a greater proportion of the institutions which can be most relied upon to furnish a safe currency are national banks; since in all of the States the only institutions which have had any experience in the last thirty years in dealing with currency are the national banks; since in a number of the States, by their constitutions or by their laws, no other banks of issue except national banks are possible, the result of that condition of things is that the simple repeal of the prohibitory tax against the notes of State banks and State banking associations will not give the people an elastic currency, because it would still leave under the inhibition of the national banking act the very banks which alone could give, with any sort of promptness, a safe and elastic currency to our people.

Mr. JOHNSON, of Indiana. Your idea is it would take time for the bank to change from one system to the other and that during that time there would be trouble in regard to the currency?

Mr. WARNER. That is one trouble; the institutions all over the country, which are in the best condition to supply currency under any law, which were the backbone of the old State systems, which are the only ones in some States which are permitted to issue by the State law any currency whatever, would, by the mere repeal of the ten per

cent tax, be left powerless to do what they alone can do promptly—assist in furnishing a safe and elastic currency.

And so, believing that this matter is not merely a vindication of Democratic principle, in which I agree thoroughly with my friend from Tennessee; believing that it is not merely a repudiation of the right of the Federal Government to interfere with what I believe to be the exclusive prerogative of the State, in which regard I would be glad to vote for the repeal of the State bank tax, no matter whether that repeal did any practical good or not; but, more than that, believing that what we want is practical relief; believing that what the Democratic masses as well as the Republican masses want is not merely a return to Democratic principle, but a provision for a safe elastic currency, I propose this bill, which, in addition to the repeal proposed by the gentleman from Tennessee, involves also an enabling act. Without giving them a monopoly, without giving them any advantage, it puts national banks upon the same footing as it does State banks in the opportunity it gives them to avail themselves of the new system of currency.

Mr. COX. If this is within your line of thought just there——

Mr. WARNER. Certainly.

Mr. COX. It gives both systems the same advantages; that is the practical effect.

Mr. WARNER. That is it.

Mr. COX. Then that necessarily changes the securities of the national banks?

Mr. WARNER. I am glad the gentleman asked that question, although I would have preferred for it to have been put a little later on; but I am glad to take it up now. The bill I propose does not directly interfere with the present national-bank system. It leaves every national bank free to issue national-bank bills under the same restrictions and the same regulations and upon the same security as now; and if, as some of our friends, especially on the Republican side, believe, as I do not, that there are a great number of people throughout this country who greatly prefer a national currency, based upon national bonds, the result will be that the national-bank system will go on just exactly as it does now.

National banks can take advantage of this act only to an extent which will not make the aggregate circulation of any national bank a greater per cent of its capital than is allowed a State bank right alongside of it. It can issue so much new currency under this act as, when added to the amount it shall have issued under the national-banking act, will make the same amount of currency outstanding in proportion to its capital as is permitted to a State bank. Have I made myself clear?

Mr. BROSIUS. That is, the national banks can issue two kinds of currency?

Mr. WARNER. Precisely. But no national bank can issue any more currency in the aggregate than can a State bank right beside it with the same capital.

Mr. RUSSELL. Do not you think there might be a danger of the national currency being at a premium over State currency in certain sections of the country?

Mr. WARNER. I see no earthly objection to national currency being at just as big a premium as anybody wants to pay for it. In other words, I have enough courage of my convictions to say that I am perfectly willing to let the two kinds of currency stand together, and let

the people choose between them; and if the people want national-banking currency so much that it is at a premium, the result will be that the national banks will have, for that very reason, enough inducement to issue national-bank currency to drive this other currency out of circulation; and if the people want national-bank currency there is no reason, even from a Democratic standpoint, why they should not have it. If, on the other hand, the result shall be what I believe it will be, and the people are equally well satisfied with the other currency, then, because it will be more easy and profitable to issue it than to issue the national-bank currency, I believe that the national-banking system will die a painless death.

Mr. BROSIUS. I want to get that idea clear in my mind on that point. Conceding that having two kinds of currency, and one would be at a premium over the other, do I understand you to say that would not be a real objection to having two kinds of currency?

Mr. WARNER. Mr. Chairman, my answer is this: It is simply inconceivable that it needs a Federal inhibition to prevent banks from issuing currency which can not get out at par, but which they will have to redeem at par as fast as it can be handed back through the window after it gets out the door.

Mr. BROSIUS. If the gentleman will excuse me, my inquiry was predicated upon the assumption of having two kinds of currency; one would be at a premium over the other, and my inquiry was that if we assumed that, would not that be a real objection to have two kinds of currency, and I asked the question because my friend stated a moment ago that if one was at a premium he did not see any difference why people would not——

Mr. WARNER. The hypothesis is so utterly inconceivable that it is very hard for me to answer his question, but I will answer that if it were possible for two kinds of currency to be in coincident circulation, and one kind was at a premium, and there were people—and that would have to be included in the hypothesis—who liked the kind at a premium, and there were other people who liked the kind at a discount, I should say let each have what he wants.

Mr. RUSSELL. Have you ever known of anyone who preferred a security at a discount to some other security at a premium?

Mr. WARNER. I never did, and that is the reason why the gentleman's hypothesis seems to be almost unthinkable.

Mr. BROSIUS. You say that that hypothesis is unthinkable. Does not my friend know that prior to the war, when we had a State bank currency, the notes issued by the different States had variable values, and that the Western and Southern money was always at a discount in the Eastern market?

Mr. WARNER. I believe——

Mr. JOHNSON, of Indiana. The people took that money, not from preference to the other, but from necessity.

Mr. WARNER. The gentleman from Indiana has answered a greater part of the inquiry of the gentleman from Pennsylvania. The difference in the current value of notes before the war consisted of two factors, one a mere factor of exchange, which, gentlemen will agree with me, is something which has nothing whatever to do with the particular matter we are now discussing, and which now, with our very great facilities for communication between different parts of the country, is an immaterial matter. What I mean is if mercantile paper is absolutely first-class in New York it will buy just as much of San Francisco paper, probably, as it will buy of New York paper, and *vice versa*,

but in former times, when communication was slow and expensive and risky, when we practically had no facilities for telegraphic transfers, so that a great loss of time and interest was also involved, the simple matter of exchange was a more important one.

Now, to the other point. The other factor in the variation in the worth of money before the war was this: On account, largely, of lack of communication or facilities for communication, but sometimes for other reasons as well, different communities were absolutely forced to carry on their business by the roughest kind of barter, or to avail themselves of currency which they themselves knew to be more or less doubtful. For example, there was a time in the western part of the gentleman's own State when the facilities for business in every shape were so limited that whisky was made legal tender. You could not sell a note for so many gallons of whisky at New York at that time except at great discount.

The trouble was not that the whisky was bad, or that the people were not honest, but that, on account of the lack of facilities of communication, they had been forced to use poor means of exchange instead of good means, and had to take the consequences. But at present I believe if the national banking law was repealed, which, however, I do not propose, that the communications now existing between all parts of our country are such as to take away the necessity for use in any part of any currency that its people did not consider as perfectly good. In other words, there would be banking houses or agencies established at every town where good currency was needed which would be putting out there the currency of the strongest banks in the country. But if that were not true, the fact that we leave in existence all of the national banks, which now supply national currency all over the country, would, it seems to me, absolutely guarantee us against the existence of any currency which would circulate at a discount.

Mr. JOHNSON, of Indiana. Your expectation is that under the practical operation of this bill national banks would soon go out of existence?

Mr. WARNER. My expectation is that the national bank currency will soon go out of existence, because that, after this plan has been in operation a few years, there will be nobody, not even my friend from Connecticut, who will see the slightest reason for the existence of a national-bank currency.

Mr. JOHNSON, of Indiana. Your answer to my question is, yes?

Mr. WARNER. What is the question?

Mr. JOHNSON, of Indiana. By the practical operation of this bill national banks will go out of existence?

Mr. WARNER. I do not think the bill will drive them out of existence. I do think that under its operation there will soon be found to be no office which national-bank bills can subserve to an advantage; but the bill does not drive them out of existence.

The CHAIRMAN. Have you taken into the consideration of this matter of a depreciated currency what is known as the Gresham law of finance?

Mr. WARNER. Unquestionably.

Mr. HAUGEN. As to whether the national banks will be driven out of existence because of the Gresham law?

Mr. WARNER. No; the Gresham law operates only in case, either by legislation or by circumstances, a forced currency is given to poor money. What I mean is this: If, for example, the business of a particular community is very large and from a lack of communication there is only a supply of shinplasters or of light-weight money, people may and will to a certain extent use that money rather than let their accounts go unsettled or be left to ordinary barter. That is practically a forced legal tender. Now, if that same result is brought about by a law which makes the poorer money legal tender in payment of debts, then people will use it for that purpose; and in every case where, either by law or by circumstances, a forced circulation is given to poor money, the result will be that everybody who stops to think—and most people do—will continue to pass that poor money and keep it in circulation while they will continually hoard the good money or use it to pay debts in quarters where creditors will not take the poor money. The result will be that the poor money will drive the good money out of circulation. If it is claimed that any amount of poor money or doubtful money which is not given, either by circumstances or law, forced circulation has any effect whatever upon the circulation of good money, then I do not concur. I believe it is generally conceded that this is entirely outside of the workings of Gresham's law.

The CHAIRMAN. I do not concede it.

Mr. BROSIUS. I do not take that as being conceded, and I do not think it is true.

The CHAIRMAN. Let me state my disagreement on that proposition. The creditor will take the depreciated money rather than have his debt remain unpaid, holding that that is better than nothing, and if this——

Mr. WARNER (interrupting). The creditor will not take the depreciated money unless his necessities are such that he is practically forced to take it; and the fact that he is taking depreciated money does not make it current or help it crowd out good money any more than, if he takes a horse he would not buy except in payment of a bad debt, this drives good horses out of the market.

In other words, I do not understand that Gresham's law involves a novel principle of currency or any uncommon trait of human nature. It is simply this, that it is so natural for us to prefer our own interest to that of our neighbor that each of us, if he has both good money and poor money, will pay his debts with the poor money if he can make his creditor accept it, and keep the good money for himself or pay it out to some one whom he can not make take poor money, with the result that the poor money is kept in active circulation and the good money hoarded or sent out of the country just as in Gresham's time. There is no Gresham law, or any other kind of a law, that says people will keep poor money when they can get good money for it. As long as poor money has a legal or virtual forced currency it will drive good money out of circulation; but whenever this poor money is made redeemable in good money it will be promptly offered for redemption and the good money will drive out, or call in, the poor money just as it did in Gresham's time. Whenever current redemption in good money is adequately provided, Gresham's law has no basis on which to operate.

If I may be pardoned the suggestion, the gentleman seems to have accepted the loose statement of Aristophanes, rather than the more accurate one of Ricardo, which, under permission, I will insert here.

> Oftentimes have we reflected on a similar abuse
> In the choice of men for office, and of coins for common use;
> For your old and standard pieces, valued and approved and tried,
> Here among the Grecian nations, and in all the world beside,
> Recognized in every realm for trusty stamp and pure assay,
> Are rejected and abandoned for the trash of yesterday;
> For a vile, adulterate issue, drossy, counterfeit, and base,
> Which the traffic of the city passes current in their place.
>
> *Frere's translation of Aristophanes, "Frogs."*

Whilst each of the two metals was equally a legal tender for debts of any amount we were subject to a constant change in the principal standard measure of value. It would sometimes be gold, sometimes silver, depending entirely on the variations in the relative value of the two metals; and at such times the metal which was not the standard would be melted and withdrawn from circulation, as its value would be greater in bullion than in coin.—RICARDO.

Mr. BROSIUS. Might I say right there, the channels of circulation can only contain a certain amount of money?

Mr. WARNER. That is right.

Mr. BROSIUS. If we fill those channels of circulation with a certain kind of money, inferior money, does it not crowd out the other?

Mr. WARNER. The gentleman is entirely correct in that. It is certainly true that, while the amount of money which is required for business purposes varies from day to day and from week to week; yet at any given time there is a certain amount which for that time is sufficient; and if there is afloat, under circumstances which prevents it from being promptly redeemed, or under circumstances which discourage its contraction by redemption, a greater amount of money than is wanted, the poor money will tend to drive the good money out.

We have an example of that at the present time to which I would like to refer. In this country, at the present time, we have a number of different kinds of currency. Some of those kinds of currency, notably one, gold, is deemed by everybody throughout the country and throughout the world to be absolutely money. In the opinion of a great many people, no matter how small a proportion of our population, the other kinds of currency are subject to a question of doubt, infinitesimal it may be, so small as not to be expressed in difference of exchange, but a doubt which makes a preference, and, going outside of our country, the great mass of the people prefer the gold which they do understand to the other currency which they do not understand, even though they may not stop to reason in regard to the comparative safety of the one as compared with the other.

At the present time, not, as I believe, on account of any question of lack of confidence in the currency, but as the result of numerous causes, there is not that certainty as regards the immediate future which induces prudent men to want to borrow, or that assurance of prompt prosperity which induces prudent men to want to lend money. The result is, between the borrower and the lender, that a large amount of money has accumulated in banks, and to-day in the city of New York alone there is, I presume, $100,000,000 deposited in the banks that is to-day drawing no interest, and they can not let it out at 2, or even 1, per cent a year.

Mr. RUSSELL. That is because it is a condition of the business of the country; that does not depend upon a currency system?

Mr. WARNER. I am endeavoring to follow out the suggestion of my friend from Pennsylvania; the business situation is now such that what under ordinary circumstances would be merely a normal supply of currency is to-day more than, in the suspended condition of business, the business community wants to use.

Mr. COX. One moment on that point; is not this the state of facts——

Mr. WARNER. I would like to continue this. Now the result of that, in exact accord with the principle which the gentleman from Pennsylvania mentioned, is this: People not being able to get interest for their money look about for investments. There are very few standard investments as to which a part is not owned in Europe—no matter

whether it is 10 per cent or 20 per cent; in some cases the percentage is larger. Therefore, when a man tells his broker he is getting no interest on his money and that he has $20,000 or $50,000 locked up in the bank which he wishes him to invest in some way that will enable him to get a little interest, and that broker goes into the market and buys Erie, or New York Central, or sugar trust, or any other kind of investment, that causes a current of those securities from other parts of the country and other parts of the world to meet the demand thus caused.

Now then, if only 10 per cent of those are procured from Europe, if only 5 per cent are procured from Europe, the result is this, that the European part will all have to be paid for with the kind of money that is recognized as such in Europe. Therefore, even if everything here can be here paid for by any currency we have, the result will be that we will have a drain of gold from this country; that will be the net result on account of the plethora of currency as compared with the wants of business. Now, suppose we should have a business revival, of which there are some signs now—if there should come a period of confidence so that prudent men would be glad to start new enterprises and want to borrow money, so that other prudent men would have such faith in the average prosperity of would-be borrowers as to be willing to lend money—the result would almost immediately be that people would sell instead of buying bonds and stocks, and the result would be that the situation would become more favorable for securities going away than for them to come hither.

The result would be not merely that the operation would be stopped of those causes which tended to drive out of this country the gold and keep in this country other currency, but there would be set in operation causes that would bring gold to this country on account of the fact that our other currency was sucked up by the demands of business. We had an example in another line only a few weeks ago, when people hoarded currency. If you will remember, during last August everybody hoarded every kind of currency they could, in order to have ready money, and the result was that $40,000,000 of gold actually came back to us from Europe, brought here practically by the exchange of securities. Now, whether it is by a panic, causing a want on the part of the people for the currency, or whether it is by expansion of business and growth of confidence that cause more money to be needed on account of the greater amount of business to be transacted, in any case, as long as we need the whole of, or more than, the currency we have of all kinds in the country, there is no tendency to drive any kind of currency out. But the moment that, either from a suspension of business and a lack of demand for the currency we have in the country, or from any other cause, the amount of currency extant is greater than the amount required for the business of the country, then we have drawn from us the kind of currency, if there is any kind we have, that people like elsewhere; and we have left with us the kind of currency, if such there is, that is more acceptable here than elsewhere.

Under this bill, I believe an absolutely automatic contraction of the currency would take place whenever the amount outstanding was greater than that required by the then demands of business. I believe too there would ensue instantly an automatic expansion of the currency whenever the amount outstanding was less than the growing demands of business. And a main difference between this system and the system proposed by the gentleman from Illinois, the good points of which I recognize, is its automatic elasticity. You take State-bank currency and let it be issued; and if, for example, a banker in New

York found they were piling in the currency upon him he would promptly send home for redemption the bills of other banks. In each village they would send home for prompt redemption the bills of the banks of every other village; and money of less repute would be most promptly sent home for redemption. Whereas now the national-bank currency, being good in every part of the United States, the currency proposed by the gentleman being evenly good, so that there is no question of redemption, that fact takes away an inducement for prompt redemption, upon which I confess I rely as most beneficent in order to help insure automatic expansion and contraction of the currency in precise proportion to the demands of business.

Mr. JOHNSON, of Indiana. Your whole theory in regard to the automatic expansion and contraction of the currency is predicated upon the belief that some of the banks will not be worth anything?

Mr. WARNER. No.

Mr. JOHNSON, of Indiana. I can not see that there is any other result.

Mr. WARNER. I am very glad that you made that point.

Mr. BROSIUS. That is the very point upon which the whole system seems to be based. That is the pivot upon which the whole automatic system rests, that the money issued by the State banks is not as good universally as the national-bank notes, and that therefore for fear lest something will overtake them, some misfortune, they are instantly returned for redemption to those banks? If it is not that fear which prompts the New York banks to return them at once for redemption, why would they return those notes any more than they would the notes of a national bank issued in Pennsylvania for redemption?

Mr. WARNER. I will tell you. Under this bill the banks are left to get as large a profit as possible from local circulation; and the process of issuing notes to meet the demands of their locality is so facilitated as to permit them to exploit in the most prompt and thorough manner the local field. Now, so long as the demand for the currency is such as to permit the banks in any locality to keep afloat the full amount of their notes, which they are permitted by law to use, they would have no particular interest in sending other notes home for redemption—excepting periodically and in a perfunctory sort of way. The very moment the amount of currency in the country becomes redundant, then the only way that any bank can keep its own notes outstanding, and thereby continue its profits on circulation, is to keep the field about itself clear by sending promptly back to the localities from which they come the notes of other banks that are presented over its counters.

Mr. BROSIUS. That is equally applicable to national banks as State banks?

Mr. WARNER. Yes, so far as concerns the new currency proposed, but not as concerns the present national-bank currency, the conditions for the issue of which are such as not to offer the same opportunities for profit, and hence not the same inducements to send home redundant circulation.

The CHAIRMAN. I understand from your bill that the bills of the banks are redeemable in United States notes, legal-tender notes?

Mr. WARNER. They would have to be as long as we have legal tender.

The CHAIRMAN. They would not be compelled to pay in coin?

Mr. WARNER. Not necessarily; though if I had my way they would be.

The CHAIRMAN. And your reason for presenting them to the bank for redemption is the holder of the bill prefers the legal-tender note to the bank's note?

Mr. WARNER. The bill-holder, whenever he finds that he has more money than he needs, and he is thus compelled to choose without reference to whether he knows anything about those bills or has any doubt as between the two kinds, will deposit the bills he does not know about rather than the bills he does know about; while each bank the very moment they get to its counter—and there is the real place where the system effectually works—will be obliged, will be induced, will be practically paid, to send back promptly, by every means that the ingenuity of commerce can devise, the notes of every other bank than its own.

Mr. RUSSELL. And if he was fortunate enough at that time to hold the national-bank currency he would not do that?

Mr. WARNER. I accept the gentleman's suggestion that under the national-bank system there is less inducement and opportunity whenever we have a plethora of currency for the banks, of their own accord, to reduce it down to the proper level; and it is because there is less inducement under the present system, and because I want to give greater inducements and make the system more automatic in its workings, that I believe that in this respect the system I propose is superior to the present national banking system.

The CHAIRMAN. Let me ask you there, in order that I may understand you thoroughly. The bills are in all instances printed by the General Government?

Mr. WARNER. Yes, I am coming to that.

The CHAIRMAN. The name of each bank issuing will be upon the bills which are to be signed by the bank officials?

Mr. WARNER. Precisely.

The CHAIRMAN. Now, this banking system is open to all banks existing that may avail themselves of it?

Mr. WARNER. Within limitations.

The CHAIRMAN. To issue 75 per cent of the unimpaired capital stock of the bank?

Mr. WARNER. Yes, sir.

The CHAIRMAN. There are 9,000 banks in the United States, including loan and trust companies, of which there are 228. There are about 800 private banks and about 1,000 savings banks, and of national and State banks probably nearly 7,000. Assuming that only national and State banks will avail themselves of the currency you would provide for 7,000 different kinds of bills of banks, and each bank probably would have five different denominations of bills, one dollar, five dollars, ten dollars, twenty, and a hundred, say, so you would have 30,000 different kinds of bills in circulation in the United States?

Mr. WARNER. Yes, in the same sense that under the present national banking system we have, say, 20,000 different kinds of currency.

The CHAIRMAN. These banks not being liable for their own redemption——

Mr. WARNER. The national banks are liable for the redemption of their bills, and if the system is such as in the line of probabilities to leave the proposed guaranty fund a sufficient insurance against failure, the result would be the same here as in the case of the national banks.

The CHAIRMAN. The question is, in regard to the circulation under that bill each bank would be liable for the redemption of its own bills.

Mr. WARNER. The national banks are now——

The CHAIRMAN. With the additional guarantee of the Government?

Mr. WARNER. Not at all.

The CHAIRMAN. The Government promises to pay, ultimately, the national-bank notes?

Mr. WARNER. Not at all; the Government promises simply to apply certain property of the bank, to wit, certain national bonds that the bank has deposited, in the payment of the notes.

The CHAIRMAN. That is, practically, the bill-holder does not look to the bank but to the General Government, but in your case the bill-holder would look entirely to the bank for redemption.

Mr. WARNER. The bill-holder would know that the bank had taken out what might be called a "Lloyd's" insurance, which, in the opinion of Congress, is sufficient to insure the prompt payment of their bills. The question of whether the assessment for the guarantee shall be a half per cent or one per cent, or whether it shall be accumulated to three per cent or to five per cent, is a matter of detail for the judgment of the committee.

The CHAIRMAN. Just on that point. The guarantee fund raised by your bill is 1 per cent?

Mr. WARNER. No, 3 per cent on the circulating notes.

The CHAIRMAN. I did not so read it, but that is all right. That is all you have as a guarantee, that is collected from all the banks to be held for the redemption of the notes of a particular bank that might fail?

Mr. WARNER. Precisely, for the currency alone.

The CHAIRMAN. The tax derived from all parts of the country will be liable for the failure of one particular bank?

Mr. WARNER. Unquestionably.

The CHAIRMAN. It is a general partnership by which they are all carried?

Mr. WARNER. It is like a Lloyd's insurance.

The CHAIRMAN. Now the only fund is the fund that is raised here?

Mr. WARNER. Yes; so far as concerns the guarantee fund, and that is only to cover the currency and nothing else.

The CHAIRMAN. You mean 3 per cent of the whole amount of the circulation?

Mr. WARNER. Yes.

The CHAIRMAN. How much would the tax be upon each bank for the amount paid in?

Mr. WARNER. It pays a tax of one-half per cent upon taking out, and also pays an additional tax of a half per cent on the amount outstanding more than a year. In view of the fact that a great part of that taken out is in circulation for a much less time than a year I believe it practically involves for the first two years a tax of about three quarters of 1 per centum upon the circulation. But in case of banks that continue a large circulation for a number of years, it would involve only a total assessment for the whole time of 3 per cent in the aggregate, in addition to the expenses, and would probably be reduced to below one-half per cent a year on actual circulation as the ultimate result.

The CHAIRMAN. This guarantee is the only agency the Government assumes so far as the redemption of the notes is concerned?

Mr. WARNER. With one exception. Whenever a bank wants to go out of business or has failed, upon the deposit, by it or its receiver or representative, with the Treasurer of the United States of an amount of cash equal to the outstanding amount of notes issued by it, it is provided that from that time all liability of the bank on account of its currency shall cease; and that the Treasurer shall apply the cash thus deposited to the payment of those notes when presented.

The CHAIRMAN. Just as it is in the national-bank bill now.

Mr. RUSSELL. I want to call your attention to this provision under which the Comptroller of the Currency can issue these notes; that he must be satisfied "that it (association or bank) has made adequate and convenient provision for the redemption of its circulating notes to be issued as provided in this act." I want you, either now or perhaps at some subsequent hearing, to give your opinion of what that adequate and convenient provision should be?

Mr. WARNER. I am perfectly willing to answer the question, although I consider it somewhat immaterial. So long as the clearing-house association of a city——

Mr. RUSSELL. But these banks are not all in a city.

Mr. WARNER. Wait a moment. If the clearing house of the principal city of a State was willing to take upon itself the current redemption of those notes, that would ordinarily be sufficient. In other words, what I mean to say is this, If I was a banker sitting in New York and I declined to accept exchange which was made payable at and accepted by a clearing-house association of a large city in any State, I have no doubt that my friends, the presidents of the other banks, would say, and say rightly, I was a crank. I can conceive of circumstances, however ——

Mr. RUSSELL. That would depend upon the time.

Mr. WARNER. I can conceive, however, of circumstances such as to raise a very proper doubt as to whether that was a safe provision. That is the reason why, in preference to any hard and fast legislative provision I, leave it in such shape that the Comptroller of the Currency can at any moment insist upon such provision as he considers adequate.

The CHAIRMAN. Is not that a very large discretion to give to any man?

Mr. WARNER. I am inclined to think it is. That is the most objectionable provision to my mind in this whole bill; and the only reason why I venture to suggest it is that, after attempting to weigh the probabilities and the possibilities of trouble under this, and attempting to weigh the convenience of having some such provision for redemption, I have arrived at the conclusion that I would not be justified, by a doubt as to the policy of giving discretion to an executive officer, in losing the great convenience and confidence which would, I believe, result from this proviso.

Mr. RUSSELL. But he has got to adopt some rule according to this, because he is not allowed to use these notes blank until he is satisfied that the bank has made adequate and convenient provisions?

Mr. WARNER. Yes; he can change it the next day.

Mr. RUSSELL. I do not know about that, for if a bank complies with the provisions——

Mr. JOHNSON, of Indiana. I think after you conclude your general remarks it will add much to this hearing if you will take it up by sections afterwards.

Mr. WARNER. That is what I intended to do.

The CHAIRMAN. Do you desire to continue your remarks at the next meeting?

Mr. WARNER. I think I had better do so.

The CHAIRMAN. Then the committee will now stand adjourned until the next regular meeting of the committee, when Mr. Warner will continue his remarks.

Thereupon the committee adjourned.

COMMITTEE ON BANKING AND CURRENCY,
Tuesday, February 12, 1894.

The Committee on Banking and Currency this day met, Hon. William M. Springer in the chair.

Hon. JOHN DE WITT WARNER, a Representative from the State of New York, appeared before the committee in continuation of his remarks in advocacy of H. R. 5595.

Mr. WARNER then addressed the committee; he said:

Mr. Chairman and gentlemen of the committee: I have already referred to the general difference between the bill proposed by myself and the draft proposed by the subcommittee on the one hand and the bill proposed by Mr. Cox on the other. There have been two other bills discussed before this committee, one being that of the chairman.

In view of the very full discussion which that has had it may be proper to say that this bill is, nearly as may be, a counterpart of the bill proposed by the chairman, proceeding, as it does, upon a directly opposite principle.

The bill proposed by the chairman, as he very fully explained, for example, was based upon the assumption that it is the duty of the Government to provide a currency for the people, not merely to coin money—as to that he and I will agree—but to supply paper currency, a currency which does not work out its own redemption as coin does. Another principle suggested by him and worked out thoroughly in his bill is that the supply of currency and the administration of the currency system is not necessarily or even desirably connected with any particular kind of business whatever, has no necessary connection with discounts and deposits or the other classes of what are called banking business; and also, it being the duty of the Government to provide a currency, and this having no particular connection with any other sort of business, that it is proper for Congress, and indeed the duty of Congress to undertake such details of administration as it may consider necessary to insure a safe, an abundant, and a satisfactory supply of currency.

This bill is based upon the opposite assumption; that it is not the business of the Government to supply note currency any more than it is the business of the Government to supply our daily bread. This bill is based upon the principle that, instead of note currency having no connection with banking business, it has no business to exist except as an incident, not necessarily of business transacted by a bank, but of the general kinds of business the greater part of which we ordinarily term banking business. My bill is also based upon the principle that, instead of its being the Government's business to attend to every detail of management of our currency system, the best thing the Government can do is, generally speaking, to let it alone.

In my bill no attempt has been made to meet all the exigencies and conditions which may arise in the development and use of a currency system. It is based upon the assumption that, if we should repeal every law in regard to the matter, this country would probably go on and have a pretty good bank-note currency. The only reason for any administrative provisions here—the excuse for it, indeed—is this: that the experience of civilized nations, especially those most nearly like ourselves, has led them on the whole to do their business with reference to note currency under certain restrictions and subject to certain safeguards. Unquestionably, too, in view of the thirty years' paralysis that our State banking system has been subjected to, we have no right

to assume, and it would be false if we did assume it, that our State banks are in a position now to supply promptly as safe and elastic a bank-note currency as if they had had the experience and development of the last thirty years to base it upon.

Therefore, though I doubt very much whether any advantage to be derived from any participation by the Government in the management or supervision or use of the bank currency system is sufficient to outweigh the probable disadvantages which in other respects will come from any interference by the Government with it, yet there is no question but that there are advantages which, for the present, will come from having the system start out under such uniform, well-known, and well-established conditions as shall enable those who have no means of keeping track of different systems and those who are not qualified to weigh the advantages of different plans—and they constitute nine hundred and ninety-nine one-thousandths of our people—to have at the start a confidence that comes from knowing that the system they are asked to test is the result of the best experience of other countries under similar conditions. And therefore the provisions of this bill are merely an attempt to make our Government serve, not control, the note-currency system we propose, and to provide at the start such safeguards, a limited number of them, as it may be assumed each State would immediately or very soon adopt for itself in some shape or other.

It is an attempt on the part of the Government to do, more cheaply and more advantageously for each State than it could do for itself, something that it must be assumed to want done, either by itself or otherwise. In other words, the analogy between the system I propose and the post-office is perhaps the most plain one. There is no question but what every man around this table, no matter what his party, would immediately rise in strong opposition to our Government controlling in any manner the kind of news or the kind of correspondence or the sort or the amount of business that should be facilitated by the post-office; and yet there is probably not a man around the table who does not recognize the universal desire on the part of every civilized man for facilities of communication with his fellows, and who will not agree with me that the post-office simply does just what each individual is certain to want done more cheaply for each individual than he could do it for himself. That is the principle and only principle upon which I can for a moment justify any even ministerial, as distinguished from political or economic, supervision by our Government of a State-banking system.

Now, briefly to refer to the bill of Mr. Walker, I understand that the difference between the bill reported by the gentleman from Massachusetts and the one reported by myself is this: I believe the gentleman from Massachusetts agrees with me, although I do not intend to speak for him, in the business principles upon which note currency can be most safely supplied, floated, and redeemed. He differs with me in the extent to which the details of administration, not economic, should go. He goes further than do I in committing administrative detail to the Federal Government. I do not understand that there is any very serious difference between the gentleman from Massachusetts and myself as to the proper basis of a currency.

Mr. JOHNSON, of Indiana. That is, he believes too much in the paternity of the Government, according to your theory?

Mr. WARNER. He agrees with me, as I understand it, that the currency business should be left to run itself as an incident of other business with which the Government has nothing whatever to

co; he, however, sees no objection to carrying the administrative assistance of the Federal Government down to matters of detail——

Mr. JOHNSON, of Indiana. And that, you think, is unwarrantable?

Mr. WARNER—to a point which, I think as a matter of policy, is unwarrantable. As I understand it he protests as strongly as I do against the Government attempting to regulate, in a political way, or even in a general economic way, the supply of currency. There are some features in his bill which might suggest much more radical differences such as, for example, those providing for legal tender, but, as I understand the gentleman from Massachusetts, that is simply a concession to his own party friends.

The first paragraph of the bill I have introduced provides for the repeal of all acts or parts of acts imposing a tax of ten per centum on notes of State banks and State banking associations, or of national banking associations, when issued under the provisions of this act. In other words this bill does not attempt to wipe from our Federal statutes all traces of what I consider unwarrantable interference on the part of the Government with the banking system; it simply repeals so much of that legislation as applies to State banks, State banking associations, and national banking associations, when acting under this act.

Mr. HALL. Do you use the words "banking business" to mean the power of issuing currency. Just a moment ago you used them in that connection to mean the power of issuing currency?

Mr. WARNER. I do not remember to have used it just in that connection, but I would hardly want to say that, when I use the words, I mean to limit them as narrowly as that, because the legitimate issue of currency seems to me to be an incident of what may be called the banking business, though not necessarily business transacted exclusively through a bank.

Mr. JOHNSON, of Indiana. I do not understand the meaning of this section exactly. It repeals all acts and parts of acts imposing a tax of 10 per cent on national-bank associations, either when used for circulation and paid out or when used for circulation or paid out——

Mr. WARNER. Mr. Chairman, the peculiar phraseology of the first paragraph is due to the peculiar phraseology—and to some extent the incongruous phraseology—of the different acts now upon the statute books relating to the subject. I have endeavored in the repeal clause to include, as far as possible, the provisions of the several acts, and the result is not a very happy one, though not my fault, I hope.

Mr. JOHNSON, of Indiana. I do not understand that there is any tax imposed by the present law upon any national-banking association.

Mr. WARNER. I beg the gentleman's pardon. The present law imposes a tax upon any notes of any national bank unless issued in accordance with the national-banking act.

Mr. JOHNSON, of Indiana. That is in the existing national-bank act?

Mr. WARNER. Yes.

Mr. COBB, of Alabama. If you impose a tax upon certain banks and not upon others then the tax is not uniform.

Mr. WARNER. This bill imposes no tax upon any banks.

Mr. COBB, of Alabama. That is to say, because the United States crushed out the banks by a tax that therefore there are no banks?

Mr. WARNER. No; this repeals the tax as to every bank which has been "crushed out" by the U. S. Government.

Mr. JOHNSON, of Indiana. This does not repeal the tax now imposed by the law of the United States upon any person or individuals operating, except such as are operating by virtue of the law of a State?

Mr. WARNER. You are right.

Mr. JOHNSON, of Indiana. You have gone somewhat into the discussion of this in your bill here and also during the other discussions we have had before this committee, but now tell me why you oppose the unconditional repeal of the tax upon State banks?

Mr. WARNER. The reason is this: Under our present national-bank act, if unconditional repeal was had simply of the 10 per cent tax against State banks or banking associations, then, since in several of the States there are absolutely no banks except national banks which would then be able to issue any currency whatever, and also because in the States where State banking systems were the strongest, the old strong State banks have taken national-bank charters; therefore, simple repeal will still leave incapable of assisting to furnish a safe and elastic currency the only banks which in some States could do so, and in most of the States the greater number of banks which are in the best condition, both as regards soundness and experience, for doing so.

Mr. JOHNSON, of Indiana. Will not national banks surrender their charters under the national-bank law and accept charters under this law?

Mr. COX. What is to prevent other companies from establishing banks, if you repeal the act?

Mr. WARNER. I will answer the two questions together. There would be nothing to prevent the surrendering by national banks of their charters and going back again under State laws, but there are great objections to forcing them to do so—the great conservatism of business institutions, the expense involved in doing it, and the real loss which, especially in their opinion, consists in the parting with the good will that always attaches to an institution, unchanged in status and name, that has won for itself a good reputation. So much for that. And in great States like Texas, like Illinois, and like Missouri, their constitution or organic law is in such shape that, even if the national banks could take out State-bank charters, they could not even then issue any bills.

Mr. JOHNSON, of Indiana. The necessary effect, then, of this bill is to create different kinds of banking institutions?

Mr. WARNER. It is to establish a new system.

Mr. JOHNSON, of Indiana. Instead of preserving a uniformity it will have a contrary effect, necessarily, according to your own statement?

Mr. WARNER. It establishes one new system; as long as the national-bank system continues, it may be said to be an additional system.

Mr. JOHNSON, of Indiana. According to this theory the national banks would not, in those States which you have mentioned, go out and take charters under the new system?

Mr. WARNER. They might not immediately do so.

Mr. COBB, of Alabama. In that connection I want to ask your objection to the existing systems of——

Mr. JOHNSON, of Indiana. Are those the only objections you have to the unconditional repeal of the tax of 10 per cent upon the State-bank circulation?

Mr. WARNER. Mr. Cobb some minutes ago asked the question if I wanted to favor existing institutions, and I will say to him very frankly I do. I always expect to be in favor of existing institutions; and I believe that, as far as possible, what we should attempt to do is to facilitate the development of existing institutions under existing conditions rather than attempt any legislation which will, to any extent that can be avoided, interfere with existing institutions, to build up new ones.

Mr. COBB, of Alabama. In that connection your point made there was you are opposed to the repeal of the State bank tax because certain States in the Union had constitutional inhibitions against the establishment of State banks; that is one reason, and yet your very bill provides for a system which could not be established in Missouri and in those other States where the constitutions prohibit them.

Mr. WARNER. I beg the gentleman's pardon. This bill provides for a system which could go into operation to-morrow in the States of Missouri, Texas, and Illinois, no matter whether they permitted their State banks to issue currency or not.

Mr. COBB, of Alabama. But they would not be powerless to prevent those under a State-bank charter; you mean under a national-bank charter?

Mr. WARNER. I appreciate the gentleman's suggestion. It is a fact that as regards the States of Texas, of Missouri, and Illinois, and others similarly situated——

Mr. JOHNSON, of Indiana. How many more are there?

Mr. WARNER (continuing)—this act does give an immediate and valuable franchise to national banks in those States, in which no other institutions in those States have at present any opportunity of sharing. If I were a citizen of Texas, Missouri, or Illinois I should feel it my duty to call the attention of the legislature to that and demand that the financiers of those communities should be given a chance to take advantage of this without complying with the provisions of the national-bank act; but as long as those states chose to keep their institutions from sharing the benefit of this act that would be their own lookout.

Mr. COBB, of Alabama. Would it not be the same thing if you should repeal the 10 per cent tax unconditionally and then call upon those States to take advantage of it in the way you suggest?

Mr. JOHNSON, of Indiana. According to your theory there would not be any great necessity for speed in changing the constitution of those States which inhibit these State banks, because you say conservative business would not desire to make a sudden change.

Mr. WARNER. No; there would probably be no great haste in changing the system; and that would be because the national banks now in those States possess in large measure the confidence of the people of those States and would supply in part at least the immediate demands of those States for a safe and elastic currency. That answers the suggestion of the gentleman from Alabama. It is true we might pass an act in such shape as practically to choke the people of Missouri, Texas, and Illinois into changing their constitutions as a condition of receiving the benefits of this act; but my idea is rather to let them change their constitutions whenever they please, and that no act we shall pass should be such as will coerce them. If they wish to take advantage of it well and good; if they do not, then well and good, too.

Mr. HALL. Suppose they do not take advantage of it, would not there be a tendency upon the part of those States that did avail themselves of it to try to get out all the currency they could under the circumstances, and make competition to furnish other States with the best currency.

Mr. WARNER. Unquestionably, and that is one reason why it is not worth while to coerce them.

Mr. HALL. I want to ask another question, and that is this: You know that there is an objection, not in my mind, but an objection I have heard urged in a thousand different instances by the Populist

class of the United States. You will find the Populists are all opposed to State currency, or opposed to any kind of currency except a currency issued by the national Government, and the argument they bring against that is that the minute you divest the power of issuing money from the national Government where the people have control of it, and vest it in banking institutions at once the banking institutions organize and form a syndicate and will decrease the volume of the currency and bring about a corresponding decrease of the price of the products, and then buy up their products, etc. That argument I do not recognize has any sense in it for the reason that it is based upon a false principle, but I would like now for you to meet that.

Mr. WARNER. The terms upon which, in any State, local institutions are to be allowed to take advantage of this proposed system is left exclusively to the legislature of that State, and hence it would be entirely competent for the people of any State to afford such facilities and to offer such inducements, or on the other hand to impose such restrictions, as in their mind would head off monopoly, and see to it that they are supplied with an abundant supply of currency.

Mr. JOHNSON, of Indiana. Is it your contemplation that in the course of time the national banks really would surrender their charters and this constitutional provision prohibiting State banks would be changed, repealed, and that the local banks, which I take is the aim of your bill, would supersede them?

Mr. WARNER. I have no hesitation in answering that the business common sense of this country will turn out to be much more true to its interests than will any prediction or supposition I may make. I believe, however, that the result will be this: A large proportion of the national banks, especially those which do not depend in a large measure upon their circulation, will continue at least a generation, possibly for two generations, to act under the national-banking act; but, in so far as concerns national-bank circulation, in all probability it will slowly dwindle, unless conditions of war or conditions of panic or such extraordinary business prosperity shall ensue as shall continue the inducement to issue currency under the national-bank act.

Mr. JOHNSON, of Indiana. The unconditional repeal of the tax on State-bank circulation would not interfere in those States which have constitutional prohibition; it would leave them to go ahead under the national-bank act?

Mr. WARNER. Certainly.

Mr. JOHNSON, of Indiana. Then, the reason you gave for not providing for the unconditional repeal would not apply?

Mr. WARNER. I beg your pardon. They could still go ahead under the national-bank act, but they could not take advantage of this act which offers opportunities and inducements for a safe and elastic currency, which the national-bank act does not offer.

Mr. JOHNSON, of Indiana. But they could get the advantage just as quick that way as the other; they would have to repeal the constitutional inhibition?

Mr. WARNER. Not the slightest; the national banks do not depend upon the State law, and are not affected by State constitutional provisions with reference to State institutions.

Mr. COX. I want to draw your mind to this proposition. Take the State of Missouri or any one of those States. You adopt your law and the national banks in the State of Missouri want to get the advantages of the provisions of your law. Now, will you tell me exactly what advantages that bank would get under your law in those States which

t does not already have under the national-bank act? Of course I nderstand your law in one respect; at the outset in furnishing the security for circulation I understand that it is different from the national bank law; but after it has done that, what other advantage loes it get under your law which it does not have under the present banking law of the United States?

Mr. WARNER. I do not entirely understand the question of the gentleman.

Mr. COX. Let me make it clearer, if you please. In those States which have provisions against the issue of certain circulation the only thing your bill can affect are national banks.

Mr. WARNER. And such other banks as, by their free will, the people of the States shall afterwards permit.

Mr. COX. I am putting my question on the basis of existing law. It simply now confers some benefits upon the national-bank system.

Mr. WARNER. Certainly.

Mr. COX. Because if it did not, it would not affect it at all. Now, then, I want to know what advantages or what privileges do the national banks get in the States of Missouri, Illinois, or other States that they do not already have under the national bank law.

Mr. WARNER. The privilege of issuing under terms which do not compel them to provide Government bonds.

Mr. COX. I see that.

Mr. WARNER. And the privilege of issuing without a special tax of——

Mr. COX. You mean one-fourth of 1 per cent.

Mr. WARNER—practically 1 per cent a year on the circulation. Those are the two principal points. They could act with greater facility and promptness and at a less expense.

Mr. COX. Your first point is that they get a circulation upon a different security?

Mr. WARNER. They will have better facilities to get circulation.

Mr. COX. Second, the tax on the circulation is repealed?

Mr. WARNER. And they will have less expense in getting the circulation.

Mr. JOHNSON, of Indiana. You were asking about States which have no constitutional prohibition?

Mr. COX. I asked about the States which have a constitutional prohibition. I want to see what benefit a bank gets under this law in those States. Now, that is the benefit derived by national banks in those States that have a constitutional prohibition, and those are all the advantages that any national bank can get under your law, whether there is a prohibition in the State or not?

Mr. WARNER. That is all.

Mr. HALL. There is another constitutional inhibition existing which you will find——

Mr. WARNER. Please wait a moment. Last summer we had a stringency of money, and money was worth almost anything you could charge for it. It was very important to the people that that want should be supplied. The national banks started in to supply it and did their best, but as an actual fact their circulation did not increase to any extent until after the want was over, and then it grew so rapidly when it was not wanted that "the last state of that man was worse than the first." Under the system now proposed currency could be promptly supplied to relieve a community.

The CHAIRMAN. By the deposit of securities?

Mr. WARNER. Without any special security at all. If a bank for example had $1,000,000 capital it could issue $750,000 as quickly as the Comptroller had the notes printed.

The CHAIRMAN. As soon as this bill was passed a bank with a million dollars capital would simply write to the Comptroller and state that it desired to make application to issue currency under this law, and if he would approve of it, he would send them notes to the amount of $750,000, and there would be nothing more to do except the signing of the officials' names to it. Now they would put these notes in the vault, and whenever anybody wanted to borrow money, or when there was any stringency, and they wanted to get it out, they would lend it out?

Mr. WARNER. Exactly; subject, of course, to the conditions imposed, which involve no unnecessary delay or expense.

Mr. HALL. I do not know how the constitutions of the States of other members of this committee read, but here is a provision in your law in the second subdivision of the second section making the stockholders doubly liable—that is, a double liability clause. Now, there is a clause in the constitution of our State which provides that there shall be no double liability of any stockholder. There is a constitutional inhibition against it, abolishing any power of the legislature to make a law to create a double liability on a stockholder. Now, I do not know how the constitution of other States read, but I expect that upon examination you will find half of the States of the Union have a constitutional inhibition against a double liability on the stockholders.

Mr. WARNER. Mr. Chairman, my answer to that would be this: In the first place, I think the gentlemen is mistaken. I think the tendency in most States is towards an increased liability of stockholders and towards perhaps a——

Mr. HALL. It does not apply to banks solely, but all corporations.

Mr. WARNER. I understand, and if the laws of any State are in such a condition, and that State wishes to keep them in such a condition, as not to permit the capital within the State—the institutions of its State—to take advantage of this act, it is far from my intent to coerce them; that is their business.

Mr. HALL. How is the law in New York?

Mr. WARNER. There would be no trouble about the law in New York.

The CHAIRMAN. I want to ask, assuming a bank is organized in the State of New York with a capital of a million dollars and that stock has all been paid out under the law which makes the stockholders liable simply for the stock out, now can you make those stockholders liable for an amount equal to that which is a double liability, we will say, without the consent of every stockholder by a reorganization of the whole bank. How can you make a bank liable when they have not agreed to be liable?

Mr. WARNER. That is a very proper question. This act applies only to associations other than national banks. As to these other institutions, there would have to be legislation, upon such terms as it is ordinarily had in changing the corporate constitution of a bank. In our State, however, every charter is granted, with an expressed reservation of the absolute power of the legislature to alter and amend its charter at any time.

The CHAIRMAN. By the legislature, but not by Congress?

Mr. WARNER. Precisely. Now, this act provides, so far as the matter to which you refer is concerned, that it shall be provided for by State law. There are two reasons why I left it in that shape. In the

first place I do not believe in passing Federal acts practically to coerce banking systems. I believe in giving them opportunities and in letting them take advantage of them if they please: and, second, I have drawn this act, so far as possible, to avoid the question of jurisdiction between State and Federal courts.

Mr. COX. That was the difficulty you had.

Mr. WARNER (continuing). And by simply providing this prerequisite there is left no possibility of any question as to the right of the State court to enforce the preference given as well as the double liability of shareholders.

The CHAIRMAN. How would the note holder enforce any individual liability?

Mr. WARNER. By suit in the courts.

The CHAIRMAN. Each man by himself?

Mr. WARNER. He could do so. But the States all have provisions for receivers, joinder of all interested by proceedings in equity, etc. It is not my idea for one moment that this act contains or suggests all limitations, safeguards, etc., which ought to be thrown about any banking system.

Mr. JOHNSON, of Indiana. You leave it largely upon the States?

Mr. WARNER. Yes.

Mr. JOHNSON, of Indiana. Each one to pass its own laws?

Mr. WARNER. Precisely. In contradistinction to what our chairman calls currency—that is, something which is legal tender, something which is separate from business, something which the Government is to see to—the currency provided for in this act is simply a series of bills of exchange payable to the bearer; and every proviso in this act, even though in form a limitation, is intended rather in a legitimate way to float the currency than to restrict it.

Mr. RUSSELL. Corporation notes which would circulate?

Mr. WARNER. We have gotten, Mr. Chairman, into such a vicious method of thinking as regards the extent to which we are dependent upon Federal Government, that we do not stop to consider as to whether law really amounts to anything or not. We assume that any Federal legislation we have upon the statute book is effective; and we believe that some terrible thing would come upon us if we did not have it. If we found a law upon the statute book to-day permitting the people of the United States to breathe as often as they pleased, and, ten years hence a revision of the statutes should occur, and that law should be left out, I am greatly mistaken if three-fourths of the people would not howl and cry that the people of the United States were being left to suffocate. As long as that feeling remains, as long as we think we are dependent upon Federal law, we have got to go slowly.

Now, Mr. Chairman, the second section of the act simply provides in the first paragraph that the institutions which issue circulating notes subject to the succeeding provisions may include State banks and State banking associations—whenever they are authorized to issue notes by the laws of their States—and also, without reference to local authority, national banking associations. The first condition is that the notes shall be printed in blank by the Comptroller of the Currency, and it is provided that they shall be printed in such shape and form as to show what bank issues them, the State it is in, and that they are issued under this act. The object of that is not to restrict the currency, but rather to assist its circulation by a practical guarantee against counterfeits.

In accord also with the universal admission, in case of notes intended to circulate as currency, that it is necessary for the public to be informed as to the amount of them outstanding, the Comptroller of the Currency is to register these notes and thus provide against overissue. This whole paragraph is purely an administrative provision, assuming what I believe to be universally admitted to be a matter of fact, that these are services which should be performed by somebody for each bank, that they are services in aid of and not in restriction of circulation, and which can be performed by the Comptroller of the Currency for all the banks at a less expense to each than it could be done by each bank for itself.

Mr. COX. I do not see that there is a provision for the registration?

Mr. WARNER. There are two matters, the distinctive paper and registration elsewhere provided for, which, perhaps, should be put in that paragraph.

The CHAIRMAN. What is the necessity for the registration when you simply limit the amount to 75 per cent of the capital stock?

Mr. WARNER. There is the question as to what notes are outstanding, and their redemption, especially when notes of banks which have gone out of existence come in and they have to be redeemed.

The CHAIRMAN. That is merely a record of the transactions which takes place with the Government?

Mr. WARNER. A matter of bookkeeping. Then, too, if there should be discovered a peculiar kind of counterfeit you can conceive that it would be desirable to know just exactly what bills were outstanding which were subject to that peculiar risk and subject to the peculiar kind of investigation necessary to head it off.

The CHAIRMAN. The object of that provision is twofold—to prevent the bank from overissuing 75 per cent of the capital stock and to secure such uniformity in the appearance of the bills as would prevent counterfeiting?

Mr. WARNER. Not merely to provide against its overissue, but to provide against any issue that is not publicly known. For example, if some bank of Massachusetts that has a capital of $3,000,000 should have outstanding only $100,000 of currency, then even in the most troublous times—if it was known that there was only $100,000 outstanding—an Oregon bank would not hurry to send it in for redemption; whereas, if the same bank had currency outstanding to the amount of three-fourths of its capital stock there would be a tendency to send it in. Now, while in my view it is better that currency should be elastic, I do not conceive that it is our business here to prevent a bank from having any advantages for its circulation which its conservatism may earn for it.

Mr. BLACK. In the second section of this bill you provide "he shall be satisfied that it has made adequate and convenient provisions for the redemption of its circulating notes." Where do you provide for the redemption in this bill?

Mr. WARNER. I will take that up. Under paragraph second it is provided that the Comptroller shall not deliver these notes in blank unless he shall be satisfied, if other than a national-banking association, that, by the law of the State in which it is situate, the holders of the circulating notes issued under this act of any bank or banking association have the first lien upon the assets of the bank, and the benefit of the provision for double liability on the part of the stockholders. That I have already touched upon.

Mr. HENDERSON, of Illinois. From what are you reading?

Mr. WARNER. On page 2, section 2, I have referred to that very fully.

Mr. COX. Let me call your attention to this point:

Subject to the necessary cost and expenses of administering the same, and that the shareholders of every such bank, or banks, or banking associations are held individually responsible for all of the outstanding circulation issued under this act, each to an amount equal to the par value of the shares held by him therein.

I want to understand that. Is that what you call the double-liability clause?

Mr. WARNER. The stockholder is liable not merely to lose his stock, but also to be asssessed in addition as much as the par value of the stock, together with any amount not paid up on such shares." This last is to provide for cases where banks are organized by people subscribing and thereby making themselves liable for a certain amount of stock at a certain valuation, without, however, paying in their subscription except as it may be called for.

Now, in case of a national bank they can not do that. They can not do it in most of the States to-day, but there is no reason, theoretically, why any State might not see fit to authorize corporations to exist upon that plan. It has certain advantages, even as regards security; and, therefore, in order to make the matter perfectly clear, it is provided in the first place that they shall be liable for their stock, and in the second place for an amount of any unpaid subscription to their stock, and in the third place an amount in addition equal to the par value of that stock. That is simply to impose upon them the same responsibilities as are imposed on stockholders in national banks at present. The reasons why it is suggested in this bill that this should be provided by State law is particularly to avoid conflict of jurisdiction between Federal and State courts.

Now, in regard to paragraph 2, and the condition:

That it has made adequate and convenient provisions for the redemption of its circulating notes to be issued as provided in this act, etc.

I do not believe, on the one hand, that there is any State in the United States which will permit the existence of a system of State banks to issue currency which would not provide some plan of redemption which would be practically sufficient so far as the security of the currency is concerned. In the next place I do not believe there is a single State where, even if this was left unprovided by law, the banks which would issue, and get any profits out of issuing, currency would not as the first means of getting their currency afloat, so as to get any profit out of it, make satisfactory arrangements for adequate redemption facilities. And, third, if there were such States and such banks I do not think the people in any locality would be fools enough to touch with a ten-foot pole the currency of an institution which would go into business without making such provision. What is more, I have no question but that not merely will the banks to be organized under this act come up to this provision, but I believe they will, of their own accord, arrange for much more elaborate and satisfactory provision for redemption at certain points in this country than is here suggested. The object of this provision is simply, at the inception of the system, to provide, in a uniform shape, a redemption provision, which, being looked after by the Comptroller of the Currency, will satisfy those, like the gentleman from Connecticut, who have very little faith in local conditions, but who have a great deal of faith in anything which the Comptroller of the Currency, being a Federal officer, has attended to.

Mr. HALL. I do not think you can say that the people generally can be relied upon to detect bad currency, for in Indiana, which I suppose is an ordinarily intelligent State, they accepted Confederate money the other day, so a member of Congress told me.

Mr. JOHNSON, of Indiana. We have some people who are——

Mr. WARNER (interrupting). Mr. Chairman, there is absolutely nothing we can do for that kind of people. I would give up that job in advance.

Now, the third provision of this section is, "that the amount of its capital paid up and then unimpaired is not less than $50,000." The amount of the capital may be much more than $50,000, but it must have at least $50,000 actually paid up, and its paid-up capital alone is to be used as a basis for circulating medium. In regard to national banks the minimum capital was fixed thirty years ago as $50,000. Probably, $100,000 or $150,000 would be a less onerous requirement to-day than $50,000 was then. I believe it is in accord with the general consensus of opinion of the people that the least capital upon which a banker should be allowed to do a currency business is $50,000.

Again, each bank has to pay the special expenses which are properly chargeable to it, as distinguished from those chargeable to the system. With a very small bank the special expenses which would be necessary in preparing the plates and attending to its issues, etc., would become quite an onerous tax upon it. It would be a still more onerous tax if it was left to attend to the matter itself, and it would be still less able to do so in competition with larger institutions; so as a practical measure, as an expression of what I believe to be the idea of propriety throughout the country in general, and also recognizing the fact that by force of circumstances which no law can change, a currency issue, when the expenses of proper precaution are taken into consideration, is not profitable unless it is of a certain extent, I have fixed at $50,000 the minimum of capital upon which it should be encouraged.

Mr. JOHNSON, of Indiana. I have forgotten what is the smallest amount authorized under the national-bank act?

Mr. WARNER. $50,000.

Mr. JOHNSON, of Indiana. Your provision is the same?

Mr. WARNER. Yes.

Mr. HALL. It is dependent upon the population in regard to the organization of a national bank?

Mr. WARNER. I mean that that is the smallest amount allowed. As a matter of fact, if I was the czar of this country I should put it at $100,000, and I believe the people would approve it.

Mr. COX. They are forbidden to issue unless they have $50,000?

Mr. WARNER. Yes.

Mr. HAUGEN. How about a State bank with less capital than $50,000?

Mr. WARNER. The State bank can go on as a bank of discount. This does not keep any State bank from going on as a bank of discount.

Mr. JOHNSON, of Indiana. Suppose a State legislature complied with this provision and the bank had money issued to-day, and suppose, subsequently, the legislature changes these features?

Mr. WARNER. I should suppose that would stop the issuing of money.

Mr. JOHNSON, of Indiana. What is the remedy and where could it be sought?

Mr. WARNER. In that particular case if the State undertook to violate in that way the obligation of a contract, which would be the case, if it attempted to interfere with the liabilities already incurred, I

suppose the matter would go to the Federal courts, but for that general reason and not on account of any particular provision here.

Mr. JOHNSON, of Indiana. Suppose the State legislature on some subsequent occasion would dispense with that condition or impair it?

Mr. WARNER. It seems to me that that would be an attempt to impair the obligation of a contract, and that it could be taken into the Federal courts.

Mr. COX. In that connection I will say that that impresses me very much, and I think if you follow that up it will impress you also. Suppose the State legislature complies with the conditions of this act?

Mr. WARNER. Yes.

Mr. COX. And it has concluded that a charter can be issued?

Mr. WARNER. Precisely.

Mr. COX. If a subsequent legislature should come along and repeal that act, does not it necessarily result that this is a forfeiture of the charter under which the bank is acting?

Mr. WARNER. Exactly; and I was discussing with Mr. Johnson the status of outstanding obligations.

Mr. COX. Now, if it is within the construction of the Federal statute, there is no difficulty about where the jurisdiction is; but here is the point I am after: The State complies with this, but the State has authority to put other matters there, and she will doubtless put others, as you said a moment ago you did not propose to restrict it any further?

Mr. WARNER. No.

Mr. COX. When you get these additional statutes you have got exclusive jurisdiction in the State courts and you have got exclusive jurisdiction under your bill in the Federal courts, so your charter is run under two independent governments as far as jurisdiction is concerned?

Mr. WARNER. You raise a question which has been raised in one shape or another in our State, and I presume has been raised in others. In these cases there is the authority of the State to alter or amend the charter at any time. Now, I believe it is the uniform ruling of the courts, that no change which a State may make in a charter under such a general clause in anyway affects the rights which may have already accrued or which may be already vested in the holder of any contract of or claim upon the institution.

Mr. COX. Right there——

Mr. WARNER. One moment—If the State, however, should insert either in its general law or in the special act incorporating a bank such a provision as in the opinion of the Comptroller would authorize a change in the charter not subject to such precedents as I have noted, then the Comptroller would say, "You have not provided for it, you have tied a string to the provision, and I can not accept it. If you simply provide for amendment of the charter at any time, then, under the law as developed by decisions, that does not bother me; and as regards notes outstanding at any time they are amply protected, and after you change your charter I will simply not issue any more notes. If, however, the charter of your corporation is subject to be so changed as to make its liability for contracts already entered into contingent, that is not what this act says and I will not accept it."

Mr. COX. You have a serious difficulty existing in some States; take my own State and several others are in the same fix. There the constitution provides that a charter granted by the legislature shall be subject to be amended or repealed.

Mr. WARNER. So does ours in New York.

Mr. COX. That is a constitutional provision. Now let me draw your mind to this: Suppose after the legislature charters a bank and that bank has got the full amount of money, has come up to the provisions of this law, the legislature comes along and says, if we permit you to take out 75 per cent of this circulation, you need not be liable only to the extent of the stock.

Mr. WARNER. Precisely; and the construction of our courts on that precise state of facts would be this——

Mr. COX. You would have a direct conflict between the legislature and——

Mr. WARNER. No conflict. The Comptroller would simply give out no more blank notes. Now so far as circulation already outstanding is concerned, the law in our State, which I believe is in accord with that generally accepted, is this—The change of the charter is powerless to effect obligations which have been entered upon before the change. You might have to go into a court of equity; you might have to take your remedy in a different shape; but, if there is anything that is well settled in law, it is that provision of our Federal Constitution which provides against the interfering with the obligation of contracts.

Mr. JOHNSON, of Indiana. How about the one who takes these notes subsequent to the act of the legislature changing the charter?

Mr. WARNER. I am inclined to think in that case—if the notes were not actually issued by the bank until after the change—there might be a very serious question of law.

Mr. JOHNSON, of Indiana. Where would the remedy be?

Mr. WARNER. If it is assumed that, after a law of his State had taken away its protection from bank notes thereafter to be issued, a citizen would accept notes thereafter issued; then it may be assumed that that citizen would have an interesting problem on his hands. But when it is remembered, not merely that no one would take such notes, but that the bank would be subject to the 10 per cent penalty tax for issuing them, it can hardly be claimed that any practical difficulty is likely to arise.

Mr. JOHNSON, of Indiana. Do not you think the greatest element of strength to a banking law in this country is for the remedy to be under one jurisdiction, either State or national?

Mr. WARNER. That is where the gentleman from Indiana and myself differ. While there are, unquestionably, advantages sometimes to be secured by a centralization of administration, yet in regard to this particular matter I believe it is a very serious question whether, even as to administrative detail, it does not do more hurt than good.

The CHAIRMAN. This is a very important part of this bill, and I suggest that we meet on Friday and continue this hearing.

Thereupon the committee adjourned.

COMMITTEE ON BANKING AND CURRENCY,
Friday, February 16, 1894.

The Committee on Banking and Currency this day met, Hon. William M. Springer in the chair.

Hon. JOHN DE WITT WARNER, a Representative from the State of New York, appeared before the committee in continuation of his remarks in behalf of H. R. 5595.

Mr. WARNER. The next proviso is that the total amount of circulation to be issued under this act shall not at any time exceed 75 per

cent of the paid-up and then unimpaired capital of the institution which issues it. That is of course an arbitrary provision. Experience has shown, however, as reason would suggest in default of experience, that the amount of circulating notes which a bank can safely float is somewhat in proportion to its actual capital, not merely because that actual capital may be finally resorted to for the payment of those notes, but because the general business of the bank bears some proportion to the capital which is invested in doing that business. Again, if the circulation is to be restrained to what I conceive to be its only legitimate function, that of serving as an incident to business in general, it is desirable that the amount of circulation shall be so limited as not to exceed the needs of the legitimate business which would be transacted through the bank issuing it.

As to the proper figure, I think we will all agree, as the result of experience, that allowing more than 100 per cent of the capital to be issued in the shape of circulating notes has proven an inducement to illegitimate circulation and has brought about disaster. The Canadian law—which is the last law as to the workings of which we have definite data of experience—fixes the limit, I believe, at 100 per cent of the capital. In practice, however, even with all of the elasticity which has actually resulted under that law, I believe the actual issues have in no case gone above 68 per cent in the case of any bank, or 60 per cent for the bulk of the banks. It would, therefore, seem that 75 per cent would afford adequate chance for elasticity.

Mr. BROSIUS. Their experience was that the limitation had no effect, they never reached that?

Mr. WARNER. They never reached it at all; so on the one hand 75 per cent would seem to be a limit sufficiently liberal to permit such elasticity as may be desired, and on the other hand there is no reason why conservatism in that regard may not be met by proposing to this extent a lower limit than the total amount of capital.

The only other question is whether we would thus provide for enough currency.

Mr. COX. Just there I want to break in and ask——

Mr. WARNER. Just one word more. The other question, of course, is whether that limit is liberal enough to allow a proper elasticity. The mere fact that in Canada it is liberal enough might serve as an analogy, but not necessarily as a demonstration. When, however, you reflect that there is now about $700,000,000 of capital employed in national banks, and that 75 per cent of that would therefore permit of an extension of the currency through those institutions alone of say $200,000,000 or $300,000,000 above what is now utilized by them; that the capital invested in State banks which are now without a system of circulation but doing a profitable business, is probably a quarter or one-third of that, and would rapidly increase under the system suggested by this act—as there would be greater inducement for capital to embark in the business, there would seem to be no possibility but that the limit was liberal enough to permit all the currency that could safely or properly be called for in this country.

Mr. COX. Now, under your law, under your proposition, what amount of circulation could a national bank take out?

Mr. WARNER. The question asked in regard to that would be reached a little later.

Mr. COX. Probably I am ahead of you in regard to that?

Mr. WARNER. On the one hand, in order to interfere as little as possible with the national-bank act, and on the other hand in order so to draft the bill as to permit every national bank to have the advantages of the system by giving it similar opportunities to those given other institutions, it is provided, in the case of a national bank, that the circulation to be taken out under this act shall be only such an amount as, together with any circulation it may have taken out under the national-bank act, shall not exceed 75 per cent of its capital.

Mr. COX. That would give the national banks the right to take out altogether 75 per cent of the capital stock. Now what I want to call your mind to is this, assuming that, now would a national bank or State bank organized under it be compelled to take out any circulation?

Mr. WARNER. It would not.

Mr. COX. Do not you regard that as a right serious difficulty?

Mr. WARNER. I confess I do not. The assumption that the banking capital of the country can by any possibility find it to its interest to combine to keep the amount of money loaned below what it would be possible to furnish at fair interest, is in my mind unthinkable. If that could be imagined, the possibility that all of the rest of the country possessed of money would not immediately take advantage of such a conspiracy in such way as to defeat it, is to me unthinkable.

Mr. COX. When your national bank refuses to take out circulation of course the argument made upon that is that perhaps the bonds are too high, but under your system, that question of United States bonds being practically dispensed with, other security being substituted in its place, now suppose a bank is compelled to take out a circulation, not that they may take it out, but they are all compelled to take it out, and suppose it finds it can not use the circulation, then does not your bill provide it may return the securities? Does not your bill provide it may return them to the Government, and is not the interest upon the securities, whether used or not, paid over to the bank?

Mr. WARNER. I have provided for no securities. I would say to the gentleman—I think I appreciate, if not the particular point at which he is aiming, at least the general drift of his thought, and my answer to it, as I understand it, would be this: This is a bill to give certain privileges to the States and to State and national banks, and to supplement these by a certain amount of administrative assistance on the part of the General Government. There is nothing in this bill which will prevent a State from imposing conditions to its authorization, which must be had before, as to its banks, this act goes into operation. It can, if it wishes, impose a special tax so long as the circulation outstanding is not more than a certain amount; it could, if it wished, exempt from taxation on condition that the circulation was kept over a certain amount. There is nothing to prevent each State from taking such measures as it pleases in that regard.

Mr. BROSIUS. Allow me to correct a misapprehension which arose a moment ago; I would direct you to section 10 of the act of 1882 which provides—

> At no time shall the total amount of such notes issued to any such association exceed 90 per cent of the amount at such time actually paid in of its capital stock.

That is the limit.

The CHAIRMAN. The original act, section 5171 of the Revised Statutes, provides the amount of circulating notes which can be issued in proportion to the capital stock.

Mr. BROSIUS. That act is repealed; this act repeals that. That is the old law which was repealed by the act of 1882 which makes the limitation the same in all cases.

Mr. COX. But you can not get it on that except by a deposit of bonds, and you are not compelled to take the circulation out. We have gotten now, however, off the point which I was much interested in. I drew your attention to the proposition if the securities upon which it was based for the redemption of the notes finally would not be drawing the interest all the time whether the notes were used or not, so that if the bank did not take the notes out they would get the interest upon the securities deposited for final redemption, and if they did take out the notes and get the use of the notes they would be just exactly in the position of the national banks where they get the interest upon the bonds and notes. Now, you said there was no security of that kind; I expect I misunderstood you, but you provide in your bill that some satisfactory means (I need not discuss that here) shall be provided, and that the securities shall be deposited in the capital of the State.

Mr. BROSIUS. No securities are provided but satisfactory means of redemption.

Mr. COX. That is what I am talking about. It has to be something satisfactory for the redemption of the notes. Your clause reads this way:

That it has made adequate and convenient provision for the redemption of its circulating notes, to be issued as provided in this act, either at the capital city of the State in which it is situate, or at some other city in such State which shall have been approved by the Comptroller of the Currency.

Mr. WARNER. I may say that the ordinary provision for redemption, even under the strictest and most conservative conditions, is not in general a deposit of securities. It consists most frequently in the undertaking of a clearing-house association to clear certain paper or to redeem certain notes. That is the ordinary provision. I can conceive of a case where a bank might choose to deposit securities and obtain such individual or other guarantee as the Comptroller might think sufficient; there is a possibility that such provisions for redemption might be had, but such are not the ordinary ones, and they are not the ones which existed before the war. The best known system is probably that known as the Suffolk bank system, which was entirely independent of any special security. The more commonly known systems are now the ordinary clearing-house systems, which could be used in precisely the same way to clear, that is, to redeem, the notes of a bank, as they are now used to clear its exchanges.

Mr. COX. Yes; but you see there are quite a large number of banks that do not belong to any clearing-house association.

Mr. WARNER. There will be banks which belong to no clearing-house association, but there is no State where there will not exist either clearing-house associations or some other form of associations for clearing the exchange most current in that State. It is entirely probable that a clearing-house association might exact from those banks a deposit of securities before it would undertake that office, but that is something with which the Comptroller would have nothing to do.

Mr. BROSIUS. You could hardly conceive of a banking system in a State without a clearing-house association?

Mr. WARNER. There is no such a thing. In some form or other it is almost necessarily involved in every complicated series of business transactions.

Mr. COX. I must confess that my mind is not clear and I always want to get it as clear as possible as we go along. Now, you carried me into the clearing-house association subject, but I am on the point

of the final redemption of the notes. There must be some place where they must be paid. Now, if the clearing-house adopts a mode, would it be in regard to redemption, or would it be in regard to their circulation; so long as the clearing-house is satisfied that the circulating note is good and must be redeemed it seems to me, then, that is all the clearing-house can do. If they secure the redemption, then what kind of a legal obligation have we got on them?

Mr. WARNER. None whatever. The thing provided is this, that, until these agencies are in such shape that the Comptroller of the Currency shall consider adequate and convenient arrangement is provided for the redemption, he has no authority to issue a single dollar.

Mr. BROSIUS. You leave it all to him, and it is in his discretion?

Mr. WARNER. Practically, under sanction of the publicity of his work and the injunction to report in full to Congress his practices and rules in regard to the matter, in order that, if other legislation be needed, it may be had.

Mr. COX. Pardon me for this question, and then I think I will leave you. The final redemption of the notes would depend upon the provisions that the State might adopt itself?

Mr. WARNER. It might in case a State chose to go to that extent in its law.

Mr. COX. There would be nothing in this act that would prohibit a State from going to that extent?

Mr. WARNER. Not the slightest.

Mr. COX. Then, when you get to that point and the State has control of what shall be done and provides for the ultimate redemption of the note and power to do that, I have some trouble in drawing a distinction between that and the State-bank law pure and simple?

Mr. BROSIUS. This is a State-bank law pure and simple, covered with a thin drapery of national authority?

Mr. WARNER. It is intended to be, as nearly as possible, an absolute enfranchisement of the banks of this country, leaving the several States to act as to institutions within their borders, but adding for the time being an administrative system on the part of the General Government in regard to certain important matters, as to which the universal experience of civilized nations in banking has demonstrated the need of uniformity in order to bring about greater security—in order to bring about greater acceptability—this to assist the circulation of the currency and to secure such economy that the business attended to by the Government shall be less expensive for each than if it was done by each for itself.

Mr. COX. Pardon me, if you please. I hate to take up so much of your time, but I want to get this as clear as I can. Now, you have conceded, in the questions I have put to you, that so far as ultimate redemption of notes are concerned that the authority of the State is undisturbed. Now, then, when you come to uniformity——

Mr. WARNER. You now use the word "ultimate." If you used that word I did not hear it. As far as the ultimate redemption of the note is concerned the guarantee fund is, of course, intended to insure that.

Mr. COX. Hear me, if you please, just there. The object to be attained and the object desired is that the notes shall be fully protected and that they shall be good?

Mr. WARNER. Not merely good, but current; this is for current redemption.

Mr. COX. Now, in order to make them good and current, you concede to me that the State has full authority as to how she shall do that?

Mr. WARNER. It may insist upon any conditions it pleases.

Mr. COX. Now, then, it is suggested to you by my friend on the left that one of the objects of Federal legislation is to provide uniformity in regard to the matter. Now, if 44 States have the right to say what will support and make the notes good, how is the Federal Government to produce uniformity as to the security for the redemption of the notes and for their being current?

Mr. WARNER. If there shall be any such difference between the laws of the several States as, after they having conformed to this act, shall cause the notes of one State to be preferred over the notes of another, that certainly is, in a sense, a lack of uniformity. This bill, however, is drawn in accord with the conviction that, if these provisions are observed, the whole of the currency will be good. And it does not seem to me an objection that a State is given the opportunity to endeavor, by making its paper gilt edged, to get as much profit for its financiers, and such circulation for the notes of banks within it, as it may secure by such action.

I doubt myself whether there would be any material difference in the currency of notes of a State which made the most meager conditions and those of a State which insisted upon the most elaborate and most conservative detail, so long as they both came within the requirements of this act. But if there should be a difference, they have a right to it. Take the State of Delaware, for example. If it thinks that by putting peculiar safeguards about its currency it can make Delaware currency acceptable throughout the country to an extent which the business of Delaware would not, of its own actual impetus, bring about, why the State of Delaware is free to exploit that source of credit for the State and profit for its financiers. My opinion is that the State of Delaware would find that it had gotten into a business in which it had very little influence; but there is no reason why it should not attempt it if it wants to.

The CHAIRMAN. Let me ask you a question right in that connection, bearing on that subject. What would be the means resorted to by bill-holders, in the hopes of securing the payment of good money for their notes, in the case of the failure of any bank having this issue? Suppose a bank closes its doors and the bills are scattered all over the United States, where does the bill-holder go to get his money?

Mr. WARNER. The bill-holder would be precisely in the same condition as any other holder of an obligation on the bank, except that he would be entitled, first, to have all the assets marshaled and to be paid before other than bill-holders were allowed to participate; second, to have equity proceedings instituted and the additional liability of the stockholders realized; and, after practical exhaustion of those, third, to be paid from the guarantee fund provided for.

The CHAIRMAN. That is simply an individual right of each individual?

Mr. WARNER. Precisely.

The CHAIRMAN. They are scattered all over the United States, and of course you would not expect a man who had $5 upon a bank, say at Little Rock, to bring a suit in chancery and——

Mr. WARNER. The receiver of the bank would marshal the assets as fast as possible and would deposit as promptly as possible with the Treasurer of the United States an amount of cash equivalent to the amount of currency which by the books of the Comptroller appeared to be outstanding. He would do it as promptly as possible as the only possible way of being able to go ahead and settle up the other affairs of the insolvent corporation.

The CHAIRMAN. Each bill-holder would wait for the winding up of the bank, and when there is anything deposited he would hunt it up and see if there was anything for him?

Mr. WARNER. I am astonished at the question, because the chairman is perfectly well acquainted with what is done in regard to the bills of broken banks. The first thing that is watched for is as to the arrangement made for the redemption of the bills. In this case, the fact that the National Government took charge of the matter after other resources had been exhausted, would practically make those bills continue current as far as individuals were concerned, and, as far as banks were concerned, would probably bring about a deposit, either at certain places in each State or at a certain central point of the United States, according as the convenience of the different banks suggested, of paper in banks in the course of liquidation.

The CHAIRMAN. The practice in our State of Illinois when the banks failed was for the bill holder to go to some bank and sell the notes for what he could get for them, and a few banks would finally get all of them and present them and get the profits of the discounts which they made by buying the notes. The bill holder always found himself in possession of an uncurrent bill, and he was apt, from necessity, having only a small amount, to take whatever he could get for them, and that furnished always a harvest for the bankers.

Mr. WARNER. That would doubtless be the result if you permitted a bank to issue three or four times the amount of its capital; if there was no place where the issues were registered so that any man could know in advance of the final settlement whether the amount of bills outstanding were three or four times the amount understood to be in circulation; if there was no provision for ultimate redemption; if there was no provision as to the liability of the stockholders, etc. Under such conditions as these I have no doubt but that the suggestion of the chairman would involve a very serious matter. But such are not the conditions proposed by me.

Again, I want right here to say, as to the possibility that there may be trouble under this or any other system, that I do not for a moment deny the possibility of trouble under this or any other system. The only question is, how far we can go in anticipating and in preventing trouble without, in our anxiety to fix everything all right, doing more harm than good. There is a limit, and my judgment is that this bill goes as far as is convenient, practical, or proper.

Mr. JOHNSON, of Indiana. Do you rely for the ultimate redemption of the bills largely upon the tax imposed on the banks?

Mr. WARNER. I have studied somewhat the experience of the State which had by far the most extensive system of banking in the Union before the war, which system was under conditions as far removed from even the attempted safety provided by this as one can imagine, and subject to every vice that I have attempted here to head off. The lesson of that experience is that this provision would have been far more than ample to provide for the ultimate redemption of the notes. With the additional safeguards thrown about the system by this bill, my belief is that the guarantee fund would be very rarely resorted to at all. The existence, however, of a guarantee fund of 3 per cent upon the total outstanding circulation, even if superfluous, would be certain to give such currency to the notes as to keep innocent billholders from being even temporarily subjected to inconvenience. In my view such is the main benefit which would come from this provision.

Mr. JOHNSON, of Indiana. In the case, however, of the failed bank

you would rely upon the guarantee fund largely for the ultimate redemption of the bills?

Mr. WARNER. Certainly. I would place great reliance upon it as insuring ultimate redemption. I do not think however it would be often resorted to.

Mr. JOHNSON, of Indiana. That is what I was trying to get in answer to my first question.

Mr. COX. A sufficiency of the fund guaranteed by that tax, whether it would be sufficient or not, must depend upon the other assets of the bank, which are provided by State law.

Mr. WARNER. It is a question of probabilities. Experience, however, shows that without the precautions provided by this act, and irrespective of State laws, a guarantee fund of that size would, practically, be sufficient, and that under the safeguards provided by this act, this guarantee fund is far more than ample. In my answer to the gentleman from Indiana, I say to him that while, of course, there is a possibility that that fund may be drawn upon from time to time, yet its main use, in my expectation, would be, not in the extent to which it would actually be called upon and therefore be effectual in bringing about ultimate redemption, but in the guarantee which it would hold up to the nation that ultimate redemption was there and the assurance that would meanwhile be afforded the innocent noteholders of banks whose solvency was doubted.

Mr. JOHNSON, of Indiana. You assume a guarantee fund in place of bonds, as under the present system, would be sufficient, predicated upon statistics which have been drawn from national-banks? Your claim is by reason of the failures under the national-bank act are shown to be very small as compared with the amount of money raised from the tax on national-bank circulation——

Mr. WARNER. I repudiate any reliance on those statistics. My suggestion is based on experience under the New York acts.

Mr. JOHNSON, of Indiana. I simply want to observe the analogies are only good in the event the guarantee——

Mr. WARNER. In case one depends upon an analogy——

Mr. JOHNSON, of Indiana. Whether one depends upon an analogy or not, the adequacy of your guarantee fund depends of course upon the safety of your banks outside of that by other provisions with which you have surrounded them.

Mr. WARNER. Precisely.

Mr. JOHNSON, of Indiana. You feel you have amply protected the banks by the provisions of this bill?

Mr WARNER. I do. I base my conclusion, not upon our experience under the national-bank act, as to which the suggestion of the gentleman is pertinent and forceful, but upon the experience of the State of New York under the loosest kind of banking laws.

Mr. SPERRY. Was that fund always sufficient?

Mr. WARNER. It was more than sufficient to make the bills good; but by a construction of the act it was decided that depositors also had a right to share in this guarantee, so that, although the fund would have been amply sufficient to have paid all of the bills, even though the bills were so loosely issued that banks supposed to have $200,000 in circulation turned out to have more nearly half a million, although the precautions against counterfeiting were such that after they had paid out the whole amount of actual notes outstanding of honest banks they would find they had been paying a lot of counterfeits, and that many of the genuine notes remained yet to be paid.

For many years after it was established all payments made from it were refunded from the assets of the broken banks. About 1842 the banks gladly paid assessments in advance to clear up matters then pending; but this mainly because by the new law the safety fund was available before broken bank assets, and the broken bank bills were accepted as payment on account of such assessment.

And before it came to an end, by the abandonment of their circulation by New York State banks under the national banking act, the safety fund had paid out millions of dollars in excess of enough to redeem every note having a lien upon it. It was the attempt to indemnify depositors that proved too much for the system.

Mr. JOHNSON, of Indiana. You are drawing simply upon the experience of the State of New York?

Mr. WARNER. Yes.

Mr. COX. Now, let me draw the gentleman's mind to this proposition. This bill provides for a guarantee fund?

Mr. WARNER. Yes.

Mr. COX. That is for the benefit of the noteholders?

Mr. WARNER. Yes.

Mr. COX. Now, you conceded a moment ago that the States have control of the matter so far as regarding the security for the same purpose, that is, for ultimate redemption?

Mr. WARNER. Yes, sir; so far as they care to provide it.

Mr. COX. When you undertake to provide by Federal legislation for a guarantee fund in this way and leave the State to make provisions in regard to the other matters, does it not strike you that your guarantee fund is an argument for the States and an inducement to the States to let the banks go into operation on a very weak and unsatisfactory security, relying upon that guarantee fund?

Mr. WARNER. So far as mere inducement to provide security is concerned, the existence of this guarantee fund might be used to some extent as an argument against the use of special security in some States where, if the guarantee fund did not exist, it might have been required. I can appreciate that.

Mr. JOHNSON, of Indiana. You state that the administrative features which you embody in this bill are satisfactory to protect the banks, and this bill is upon the theory that the States are already able to give good currency?

Mr. COX. It is conceded that so far as a fund for the ultimate redemption of the outstanding notes is concerned, a guarantee fund must and can be provided for by the State. Now then, here is a difference in the system you are going to inaugurate and the system of New York: The very statute that provided a guarantee fund in the State of New York is the same power, the same legislature, as the one which provided the other additional security for the redemption?

Mr. WARNER. If the gentleman will look at the different variety of laws which were embraced within those relating to banks in New York which had the use of this guarantee fund, and also at the very serious defects in those laws as demonstrated by experience, there is one thing which I have no doubt the gentleman will do—he will admit that the plan I propose is much safer than was that.

Mr. COX. I concede all of that, but that system has this in it which that has not, that the State had the entire jurisdiction of the entire matter.

Mr. WARNER. Yes.

Mr. COX. Now you have split the jurisdiction, putting a part on the Federal Government and leaving a part on the State government?

Mr. OHNSON, of Indiana. Let me ask a question right there which is suggested by the gentleman from Tennessee, although it may not be directly on what you are saying: What banking system can the people of this country devise through the medium of their State legislatures that they can not equally devise in Congress through the medium of their Representatives?

Mr. WARNER. Mr. Chairman, the gentleman from Indiana belongs to a school of politics the members of which sincerely believe that when a matter can be attended to with anything like equal convenience by either State or National Government, the National Government should take it up. I belong to a school of politics the members of which believe, that where any matter can be attended to with anything like equal convenience by State agencies—indeed without such extraordinary inconvenience as practically to call in national interference as a matter of necessity—that it should be left to the States.

Mr. JOHNSON, of Indiana. Now do not you think that there is more likelihood of our securing uniformity by a general act passed by Congress, through the Representatives of the people in Congress, than there will be to have each State, through its own legislature, pass its peculiar banking laws?

Mr. WARNER. If what the gentleman means is identity, I agree with him; if what the gentleman means is uniformity in the sense I use it all through this matter—that is to say, uniformity in proper and necessary provisions—I should say that it is just as practicable to effect it by such an act as this, subject to further action by the States, as by an act of the Federal Government.

Mr. JOHNSON, of Indiana. What I am driving at is this, if each State is left to itself to devise, through its own legislature, a banking law, there is more likelihood to be a lack of uniformity and soundness of the currency, taking it on the whole, than through their representatives acting directly or in one central body, and the point I want to make is this——

Mr. WARNER. Our Representatives acting in this House are naturally affected by every wave of sentiment, sound or unsound—I mean to characterize neither—that for the time being seems to have the uppermost in politics. If this matter was referred to the States themselves, the States would be affected by such influences as work upon them locally. Now, sir, I have found the nearer you get home to what a man is responsible for locally, and to what he knows about, the more conservative he is. For example, there is no question but that the State of Arkansas, if I am not mistaken, would instruct its Representatives to procure the United States to issue fiat money. I believe there is not a district in Arkansas from which a representative in the State legislature would not receive his recall to permanent private life should he propose that the State of Arkansas do any such thing.

Mr. HENDERSON, of Illinois. If you will allow me to ask one question?

Mr. WARNER. Just a moment. In other words, Mr. Chairman, while I appreciate the number of the political wild animals still roving about this country, although I might classify them in a different way from what would the gentleman from Indiana; my own idea is that it is a plagued sight safer to let those animals rove in their own locality until they are killed, in the places which they curse the most, than to bring them here in a menagerie to scare the nation.

Mr. JOHNSON, of Indiana. Do you not believe a monetary heresy or craze may seize the best portion of the country and obtain recognition which would not be injurious in a State legislature where it was utterly powerless, but which when finally exploited and found its way here in the National Government might influence the entire country?

Mr. WARNER. I do not believe there is a State legislature, acting in reference to State law upon matters for which the State is responsible, and in which its citizens are primarily interested, that would not be more conservative than would the same legislature in egging on Congress to do something in which it had no responsibility except in common with others.

Mr. COX. Amen.

Mr. HENDERSON, of Illinois. The question I want to ask is this. If it would be true that Arkansas would instruct her Representatives and Senators in favor of fiat money, why would not they, if they had the power, issue fiat money themselves?

Mr. WARNER. My dear friend, that is just exactly what they would not do. You take the men on this floor whom you—not myself—may pick out as being absolutely unsound on the financial propositions raised in this House, and examine them as to their capacity to conduct their own affairs, and the extent to which they have been conservative, in their private business and I think you will find, without exception, that they are perfectly stainless from your own standpoint.

Mr. JOHNSON, of Indiana. If your argument proceeds upon the theory that the State is an identity——

Mr. BROSIUS. I was just going to ask if the gentleman would allow himself to be called home to his bill by a question that I would like to put to him. In regard to the state of security we have developed in the progress of thirty years to a high state of perfection, but the difficulty is in regard to the state of elasticity. Now, I would like to have the gentleman give me his judgment whether the provisions of his bill would be likely to secure a higher degree of elasticity than we may secure under the national banking system with such modifications as might be suggested by himself.

Mr. WARNER. To the extent that the matter of the organization of banks and their permission to do business is left to the several States, to that extent will local laws be from time to time so modified as to enable banks to meet the demand for elasticity of the currency.

It will be easier, from time to time, in accord with the needs of the several sections of the country, to adjust the currency circulating within those sections if the matter is left with each State to act whenever it may see fit and in such direction as it sees fit, compelled all the time to act within lines of safety, than if by any system, no matter how perfect it may be, we shall attempt to do the same thing through Federal legislation. The State legislature has power to adapt its legislation to the needs of the locality and the local development of business. Something which would be perfectly immaterial as to the soundness of the currency might be very material to its elasticity in certain quarters. Again, if Texas or Missouri, for example, proposed something which would be reasonable or desirable there, but in New York or Massachusetts might be dangerous, or at least not desirable, delay, inconvenience, and friction might result.

The result would be just the same in Federal legislation, as compared with State legislation, upon this subject, as it is now with the decisions of our U. S. Supreme Court on commercial matters, in comparison with those of our State courts. It is notorious that if you want to know what the law will be in the Federal courts, all you have got to do is to read the

statutes and decisions of New York, Illinois, Massachusetts, and a few other states. If you want to know what is the Federal law in a case not already decided, you have got to calculate how far the U. S. Supreme Court is behind those states. So in regard to the adjustability of a banking system to meet local as well as general developments in methods of doing business, the system I propose would be superior to the Federal system. I do not, however, wish to be understood as suggesting that the main requisites for securing elasticity could not be secured under a Federal system.

The CHAIRMAN. Now let us go back to another matter, and that is the matter of final redemption; the Canadian system is a national system?

Mr. WARNER. Yes.

The CHAIRMAN. You have assimilated your system to that, and the whole banking system of Canada is governed by a law passed by the Dominion of Canada?

Mr. WARNER. Yes.

The CHAIRMAN. That law provides that each bank shall deposit an amount equal to 5 per cent of the average circulation with the Government, to be called a redemption fund, and when a bank fails the whole fund that has been deposited by all the banks is liable for the circulation of that failed bank, and the liquidator immediately applies it to the payment of all notes outstanding, and as soon as the bank fails to pay on demand, the notes of that bank draw 6 per cent interest, and so the bills, instead of going down, go to a premium. Now, the Scotch system is a joint system, every bank is liable for all the circulation, but they apply——

Mr. WARNER. As to that, there is no reason why we should not have the branch-bank system here.

The CHAIRMAN. So you have only one system in each case under which all the business of the bank is wound up, and therefore it does its work well in ordinary times; but that is very different from a system where you simply enter into a portion of the business of winding up the bank by the Government and leave the bill-holder in an uncertainty. I would like to have you explain the difference between the system upon which you base your bill as a precedent and the one which you have actually adopted.

Mr. WARNER. The chairman, except in a few particulars, has fairly stated the basis of the Canadian banking, so far as redemption is concerned; and I have only to say in regard to that that Canada is rather comparable to one of our States than to our whole country; and the reasons which, to me, make a State system, as distinguished from the national-bank system of the gentleman from Illinois, desirable, are also in favor of leaving as much as may be to the State and as little as may be to the General Government. The only reason why I have not provided that there should be a central place of redemption, that there should be, a guarantee fund to start with of, say, 5 per cent, to be increased, say, to 10 or 15 per cent, etc., etc., is because that after going over, as far as I was able, our experience, it seemed to me it was not necessary.

The value of any currency system, especially in its prompt utilization by those who wish to borrow capital on as easy terms as possible, and as regards the whole question of elasticity, is largely dependent upon the lack of those things which offer obstacles to its being used and are a practical tax upon its use. I therefore felt it my duty in drawing this bill not to go further than the conservative basis of experience suggested.

There are no reasons, however, why, if the provisions of this bill are not ample for the purpose, amendments should not be had which shall meet, and more than meet, the very difference to which the gentleman has called attention, between this bill proposed and that now successful in Canada.

Mr. JOHNSON, of Indiana. The Canadian system takes no note of geographical limits, although Canada is quite a large country. It is a broad national act to furnish the people with the currency.

Mr. BROSIUS. There is not a province in Canada that has any agency in the currency of the country at all; the Dominion of Canada is a unity.

Mr. WARNER. Unquestionably.

Mr. COX. It is absolutely repugnant to our system of government.

Mr. JOHNSON, of Indiana. Has it occurred to the gentleman that there may be more reluctance in regard to a guarantee fund for the practical guarantee of the solvency of every bank where 44 States will have to frame laws under which the banks would be conducted than if all of that was framed under one general law?

Mr. WARNER. I have no doubt the gentleman is entirely correct. The answer to that, however, is this. Putting as liberal an estimate as experience would justify upon the rate of the assessment proper to be required to make up and keep good this guaranty fund under the conditions suggested here, that rate is so far below the ordinary expenses caused the banks by our present system, that there can be no question but what it would be promptly and readily paid, especially since it is in aid of increased profits by facilitating the circulation. As to how much the banks would stand, whether they would stand an assessment of 2 per cent a year, for instance, I can not say. I think they will not be oppressed by the rate I propose. I think it is sufficient; and therefore I do not consider it important to discuss whether, under some other plan, they might not be willing to submit to a higher rate.

The CHAIRMAN. We were talking about final redemption. In case a bank fails and wants to wind up, I do not know that I understand what system you have provided for current redemption, except so far as the Comptroller of the Currency shall prescribe.

Mr. WARNER. None whatever.

The CHAIRMAN. Can he prescribe a different system for one bank from another?

Mr. WARNER. Certainly.

The CHAIRMAN. It is in his discretion?

Mr. WARNER. Absolutely.

The CHAIRMAN. To say what each bank shall do for itself?

Mr. WARNER. I have no doubt, as a matter of fact, the practice will become crystallized into a very plain system of rules within the first year, and that it will continue almost uniform except as modified by the development and facilities of commerce.

The CHAIRMAN. Now, I want to ask if you think there is a man in the United States who is so wise and great as to be intrusted with power so important as to exercise solely upon his discretion that responsibility with nobody who can make him even by mandamus do this and that or the other; he is above the courts——

Mr. WARNER. I appreciate the suggestion of the gentleman, and, as I mentioned in an earlier hearing, this is the one clause of this bill about which I have had the most doubt. I believe that without such provision at all these notes would be perfectly safe. It is unthinkable to

me that it is necessary that we should have Federal statutes to prevent people from doing what is either impracticable or unprofitable, as certainly would be the attempt, with the lime light of the press of this country thrown upon it, of any bank to make much profit out of circulation without providing adequate provisions for redemption. I have no question myself but what, as a matter of fact, there will not be 5 per cent of the banks of the whole country but which, directly or through some intermediary, will clear at New York, Chicago, St. Louis, and other cities. The provision of this bill is put here simply as an additional—probably superfluous—safeguard.

Mr. JOHNSON, of Indiana. All legislation proceeds upon the theory of the fallibility of the people.

Mr. WARNER. But not of the infallibility of legislators.

Mr. JOHNSON, of Indiana. That is true.

Mr. WARNER. This is an enfranchisement of the banking currency of this country upon certain conditions, and it will take some time for this to get into practical operation. This act provides that whatever rules the Comptroller may adopt shall be submitted to Congress within so many days after the beginning of its session. And there is nothing, even if he did not submit these rules, to prevent Congress from taking such further action as it may see fit in limiting his discretion. By the provisions of this act the attention of the Congress and the press of this country is to be called to those rules very soon after Congress meets.

It is not a question of taking an old system and giving to a gentleman at the other end of the avenue the capacity to throttle it; it is taking a new system and putting upon it just such safeguards as we believe will practically insure its safety, and then allowing him until Congress meets to make such rules as within the provisions of this act, not inconsistent with it, he shall think proper in regard to details, which we can afterwards change if we please. My own belief, Mr. Chairman, is that ten years after any system of this kind goes into operation, the only call for the exercise of discretion of the Comptroller will be in the line of adapting this system to some new development of clearing houses or communication facilities; and that by that time the people will have become so used to knowing that they can attend to their own business that in all probability this power of the Comptroller to make rules will be absolutely forgotten, unless in a good, fresh burst of Democratic feeling it should be thought best, because they have not amounted to anything good for many years, to take away the restrictions that better the natural development of banking in the States.

Mr. JOHNSON, of Indiana. Are not people attending to their business either through Congress or their State legislatures when they pass a law regulating any particular kind of business?

Mr. WARNER. In one sense, yes. There is, however, a way of attending to one's business which interferes with the business of other men and communities, and there is a way of attending to one's business by abstaining from bothering as far as possible with other people's business;—and that is Democratic.

Mr. JOHNSON, of Indiana. The gentleman is evidently afraid of too much legislation?

Mr. WARNER. Exactly; I believe our principal business is to repeal bad laws.

Mr JOHNSON, of Indiana. I am afraid the gentleman will succeed in putting a bad law upon the statute books.

Mr. BROSIUS. Where a business is a general business a man can only attend to his own business by attending to the business of people generally at the same time?

Mr. WARNER. I accede entirely to the gentleman's suggestion. The main difference is in the tendency of men. Some find it easy to believe that a particular thing is an excuse for attending to other people's business; and others find it hard to believe that anything but the most urgent necessity justifies anyone in interfering with anybody else's business.

The CHAIRMAN. I desire to have Mr. Warner explain whether the proposition to delegate to the Comptroller the power to make regulations in regard to current redemption of these notes is not in fact a delegation of legislative power by Congress to the hands of an individual?

Mr. WARNER. It is so only in the sense that discretion as to any detail of business in any Executive Department is a delegation of legislative power. The Executive Departments are, of course, our agents in one sense; anything they do or leave undone are our acts and omissions; and the leaving to them of any discretion is leaving to them a matter which might possibly come within legislative power.

The question, however, is not as to theory. The gentleman will immediately admit if we start down at the last detail as to how the Treasury Department is going to be run, that he would go a great way before he would interfere with the discretion of our executive officers in regard to details and methods. On the other hand I admit that if we start from the top down we would go a great way before I should not hesitate in leaving any discretion whatever. The question is simply where the line is to be drawn; and whether the question is one of business which may be properly left to an executive officer, or a question of politics which can not be properly left to him.

Mr. JOHNSON, of Indiana. It is a very hard thing to have the government of many men without a little delegation of power.

Mr. WARNER. It is impossible.

Thereupon the committee adjourned to meet on Friday, February 23, 1894.

COMMITTEE ON BANKING AND CURRENCY,
Friday, February 23, 1894.

The Committee on Banking and Currency this day met, Hon. William M. Springer in the chair.

Hon. JOHN DE WITT WARNER, a Representative from the State of New York, appeared before the committee in continuation of his remarks on H. R. 5595.

Mr. WARNER. Mr. Chairman and gentlemen of the committee: I am a little uncertain how far, so far as the bill itself is concerned, I may be deemed to have proceeded, but, as I understand, the ground has practically been covered down to and including line 56, on page 3. The next paragraph, paragraph 4, simply makes definite what notes shall at any time be considered as outstanding and provides, for the purposes of this act, that all notes shall be considered as outstanding after the blanks have been once issued by the Comptroller until their actual destroyal shall be made and registered by him.

There will occasions arise which would not be met by that provision. For instance, a steamer might sink in mid-ocean carrying down a large amount of those notes. It has never been found practical, however, in any legislation to provide for special cases. They have been dealt with by special legislation whenever occasion arose. So, to any objection to the provision here, that it does not apply to every possible case, my

nswer is it does apply to cases which can properly be met by a general act, and that extraordinary cases will have to be met in the future, as in the past, by special legislation. We had special legislation, as you will remember, in regard to bonds at the time of the Manhattan Bank robbery.

The next paragraph is paragraph 5, on page 4 of the bill. It provides for reports by every bank or banking association which shall take advantage of this act, and which is not a national-banking association, such reports being precisely the same in character and extent as are now required by the national-banking act of national-banking associations. The reason for the exception of the national-bank associations by this act is, of course, perfectly plain. They are already provided for by legislation which, so far from being repealed, is expressly confirmed by this act.

The next paragraph—paragraph 6, on page 5—provides for the right and the duty of inspection, by the Comptroller, of the banks, not national banks, taking advantage of this act to the same extent as he now has the right and duty in regard to national banks. The reason why national banks are excepted from this particular provision is the same as in the case of the similar exception from the former provision.

There is, however, one point in this connection to which it may be proper to call attention. While the reports and investigations and the publicity of the result of these reports and inspections are the same as now provided for in reference to national banks, there is nothing in the act by which the Comptroller can take advantage of the results of these inspections and reports to supervise, control, or in any way direct the course of the bank so inspected or reporting except in one regard. He is left with the discretion of judging whether the results of such reports justify the issue, if it is asked, of more blank notes under this act. With that exception, the object and effect of these examinations and these reports is simply to give such publicity to the affairs of each institution—to secure a collation at the point where it will be most accessible to the whole country of the result of the examination of these institutions, and thereby, as far as possible, on the one hand to keep the public informed of their status, and on the other hand to give the public the benefit of the natural rivalry which would arise between these systems to make them as perfect as possible—this in order, not by control, but by inducement on the one hand and a menace of loss of circulation and credit upon the other, to bring about the most healthful and most prompt development in the direction of security of the State system thus permitted. It is not, except indirectly, a provision for the security of the notes which are issued——

Mr. JOHNSON, of Indiana. In other words the Comptroller may make examinations and publish the information, but has the Comptroller any power to proceed and appoint a receiver——

Mr. WARNER. No.

Mr. JOHNSON, of Indiana. All the power he has is not to deliver the notes—that is, any additional notes, if he thinks they have not complied with the provisions of this bill or if he expects it to fail.

Mr. WARNER. There is no special result as regards notes which are already outstanding, except in so far as the tendency of this system of examination and these reports shall bring about a more conservative course of business on the part of the bank and a more limited acceptance of notes on the part of the public in case its condition has not been good.

Mr. BROSIUS. Do I understand the Comptroller has no power to close a bank under any circumstances?

Mr. WARNER. No, sir; not the slightest. He has nothing whatever to do with it.

Mr. BROSIUS. But he determines whether it shall have any circulation in the beginning?

Mr. WARNER. Unquestionably.

Mr. BROSIUS. Suppose after it gets its circulation and it is discovered to have perpetrated a fraud, he has no power to withdraw it?

Mr. WARNER. Not the slightest. It would do no good if he had the power; he could do nothing more than marshal the assets of the bank and the guarantee fund in his hands to pay the notes. He is to have the power to withhold the giving out more notes, and therefore would actually have the power, so far as security of circulation is concerned, that he now has under the national-bank act. The difference is this, that I have left him without that apparent guardianship over everything on earth, upon which people rely for protection in times when there is no trouble, and which they find worthless whenever the strain really comes. The omission of this takes away from the notes no security which by any possibility they would have by giving the Comptroller additional powers. It simply avoids a conflict after the colt has been stolen, if it has been stolen, between two authorities, as to which one shall lock the stable door.

Mr. COX. In the first instance, if they have got the currency and misapplied it or have been guilty of fraud, everything the Comptroller can do is to say that they shall not have anything more?

Mr. WARNER. Precisely; that is all that he can do now.

Mr. BROSIUS. Oh, no.

Mr. WARNER. He can stop the bank, but what good does that do?

Mr. COX. Then who shall stop the bank?

Mr. WARNER. Any man who holds one of its notes or one of its obligations and who wants it stopped.

Mr. COX. To what court would it go?

Mr. WARNER. In a State court if he was a citizen of that State, and to the United States court if he was a citizen of another State. Any man who holds any note or obligation of that bank is left absolutely free to stop it.

Mr. COX. One more question, if you please. I understand that process. Now an application, say, is made for taking out currency?

Mr. WARNER. Yes.

Mr. COX. And the bank insists that it has complied with the law and the Comptroller insists upon the other side that they have been guilty of fraud. Then there is a sharp conflict between the bank and the Comptroller; who is to decide?

Mr. WARNER. The Comptroller is absolute until that authority is curtailed in some way by Congress.

Mr. COX. It will then take additional legislation to relieve that bank, notwithstanding it may be absolutely solvent?

Mr. WARNER. I have no doubt, after the first report here from the Comptroller, that there will be a section or two added to this bill which will be a guide and a limit to some extent in the exercise of his discretion. I have no doubt, as the operation of the act goes on, that precedents will become more and better established and legislation more definite, so the question my friend raises will become almost an immaterial one. For the present, however, he possesses the discretion given by the bill.

Mr. COX. There is no way you can reach the Comptroller unless there is legislation directing him to issue more money?

Mr. WARNER. No.

Mr. COX. He can not be touched by the courts?

Mr. WARNER. The very moment you make legislation providing certain limits or providing certain conditions then, upon compliance with those conditions or upon the claim it has been complied with, you can mandamus the Comptroller I believe.

Mr. HALL. But you give the Comptroller here judicial power, therefore he is not liable.

Mr. WARNER. For the time being, unquestionably; until we can see our way clear to——

Mr. HALL. But I mean under your bill?

Mr. COX. Now, your legislative power also is granted power that it shall issue currency?

Mr. WARNER. Under certain conditions named in the act.

Mr. COX. Now, then, when that is done it raises a question of some character or kind. Now, suppose the Comptroller says: "I do not think you have complied and I will not do it." Then you are driven to the United States courts for a mandamus for the construction of the act.

Mr. WARNER. Precisely.

Mr. COX. When you do that can you mandamus the Comptroller of the United States in a State court?

Mr. WARNER. In a State court? I should imagine not, under a Federal act.

Mr. COX. Well, I am trying to get your mind on this point; you will necessarily have to go to a Federal court to exercise that power?

Mr. WARNER. Unquestionably; and any legislation which we pass here, enfranchising in any way a State-banking system from the imprisonment to which it has been subjected for the last thirty years, is subject to precisely the same suggestion.

Mr. COX. Now, a moment ago you held when a bank was in an insolvent condition the Comptroller could not wind it up or put it in the hands of a receiver? You then said the note-holder must come to the State courts?

Mr. WARNER. To the State court if he is a resident and to the U. S. court if he is a nonresident.

Mr. COX. Does your act confer jurisdiction upon the State and Federal courts?

Mr. WARNER. Not the slightest.

Mr. COX. Then, if he has to go to the State court to wind up a bank, and you have to go to the Federal court to get a mandamus on the Comptroller to comply with the law, then you meet two jurisdictions in regard to it?

Mr. WARNER. Not the slightest. It is only one of the cases which may arise under any act, on account of the relations between the State and Federal courts—not on account of the phraseology of any particular act, but because it is a matter as to which Congress has acted or the Constitution speaks. For example, if our State of New York passed a law which I believed tended to impair the obligation of a contract, then, not because there is any authority given by the act to go into the Federal courts, but because of our Federal Constitution, I can carry that point to the Supreme Court of the United States. In that sense there is a dual jurisdiction in regard to nearly everything we do. We pass here a certain act of Congress. If there arises a question of interpretation of that act, the Supreme Court of the United States, and the

Federal courts before it gets there, are the arbiters. In this sense any legislation enacted by Congress may be said to involve a dual jurisdiction, unless it takes jurisdiction away from the State courts.

Mr. HALL. I want to say, in order to clear the question in my own mind, of which Mr. COX, of Tennessee, spoke a few moments ago. Under the sixth section of your bill, and under the same spirit running through the whole bill, the Comptroller of the Currency is given certain judiciary functions. He is to decide whether a bank has acted in such a way as not to entitle it to further currency. In deciding that question he acts in a judicial capacity. I want to know if there is any authority for any court to mandamus an officer who acts in a judicial capacity? I just ask that for information?

Mr. WARNER. If what the gentleman refers to is to cause by a mandamus a certain decision to be rendered in a matter as to which discretion is given, I answer him, no. If the question is as to whether a mandamus does not lie to compel any officer upon whom a duty is devolved to perform that duty, then I say, yes.

Mr. HALL. But that is the very question. Do not you leave it discretionary with him here; do not you leave him that play of ground that is necessary to perform those functions?

Mr. WARNER. Unquestionably, unless this bill is so amended that it shall prescribe more definitely the conditions under which he shall act, or until we have further legislation which shall do so; then it is very probable that, in most of the cases which might arise under it—questions such as the gentleman raises—the Comptroller might plead that he was not subject to mandamus. Whether he would be subject to mandamus afterwards would depend upon the nature of the legislation had.

Mr. HALL. But I am speaking of this bill?

Mr WARNER. I believe most of the questions would be such as would not be reached by mandamus. I mean most of the questions that might arise unless further legislation was had.

Mr. COX. As a rule, you can not mandamus a man to perform a duty when discretion is lodged with that man?

Mr. WARNER. You can not do it at all so as to take away that discretion.

Mr. COX. Does it not follow, on the other side, that where you authorize and direct him to do a thing, then a mandamus will lie?

Mr. WARNER. It will lie to compel him to act, but it will not lie to compel him to act in the direction any particular man wants.

Mr. COX. It will compel him to act when the law discloses what he shall do?

Mr. WARNER. Precisely.

Mr. COX. But it does not compel him to act when he exercises his own discretion?

Mr. WARNER. I think we agree, but let me see. A mandamus will lie to compel an officer to perform his duty——

Mr. WALKER. Any prescribed duty.

Mr. WARNER. To perform any prescribed duty. It will not lie to direct the manner in which he shall perform that duty, provided the law leaves it to his discretion.

Mr. COX. Then you must have your act either one of two ways. If you confer discretion upon the Comptroller there is no way to force him to do it?

Mr. WARNER. None whatever, until you have either amended this act or by subsequent legislation made more definite provisions.

Mr. COX. I would like to know whether by this act or any other act, if you confer discretionary powers upon him, why as a matter of course there is no jurisdiction lying in a mandamus?

Mr. WARNER. Not as to the discretionary power, no; but it is very easy so to draft a law that the question as to his action shall depend simply upon a proven state of facts, and in that case you can lead him by mandamus right square up to the trough and make him drink.

Mr. JOHNSON, of Indiana. Your bill requires that the State shall charter the State banks and require that there shall be a first lien of the noteholder upon the assets of that bank. Now, suppose the State does that and the Comptroller of the Currency refuses to issue on the ground it has not done so, and it was very clearly susceptible of proof that it had been done, the court could mandamus?

Mr. WARNER. Yes, sir.

Mr. JOHNSON, of Indiana. Now, I want to ask you in regard to another branch of the subject which I wish to get you to explain. If you should unconditionally repeal the 10 per cent tax upon State bank circulation there can be no conflict of jurisdiction between the Federal and State courts, they being all before the State courts?

Mr. WARNER. None caused by this law.

Mr. JOHNSON, of Indiana. Under the national banking law there can be no conflict, because everything is amenable in the courts of the United States?

Mr. WARNER. Well.

Mr. JOHNSON, of Indiana. But under the conditions which you seem to establish by your bill the jurisdiction must necessarily be divided, and there may be frequent instances in which doubtful questions would arise as to which court would take jurisdiction of the matter; am I right or not?

Mr. WARNER. Mr. Chairman, the gentleman is not right. If we simply have the unconditional repeal there would still be possible appeal to the Federal courts in any case; for example, involving any question of impairing the obligation of a contract, in any case involving the construction of the repealing act, in any question involving the question as to whether or not some other act upon the statute books was more or less inconsistent with the repealing act.

Mr. HALL. Just right there I want to know if the Federal courts, in case of the unconditional repeal of the State bank tax, would not be the court that a man would go into ninety nine times out of a hundred if he were a nonresident of the State in case the bank had not complied with the conditions to have a receiver appointed under the Federal courts?

Mr. WARNER. Unquestionably.

Mr. HALL. Therefore, it is open to the same objection as your bill on that point?

Mr. WARNER. In the extent to which this act leaves any even administrative assistance in the hands of the Federal Government, I think the gentleman will admit we have seen there is a clear demarcation of the jurisdiction. There is, as there must be always, the question of the construction of this act, but as between the most extreme case the gentleman can imagine of the demarkation between the two jurisdictions and the demarkation laid down in this bill, there is no material difference.

Mr. JOHNSON, of Indiana. I will put the question to you again, whether the absolute and unconditional repeal of the 10 per cent upon State banks would not greatly simplify the question of jurisdiction as

compared with the conditions which will exist under the bill which you propose?

Mr. WARNER. It would not.

Mr. JOHNSON, of Indiana. Do not you know just to the extent this bill makes extra provisions to that extent there will be room for a conflict of jurisdiction?

Mr. WARNER. Mr. Chairman, my belief is that the provisions of this bill are such as are likely to prevent a very much larger number of appeals to the Federal courts than would the simple repeal. I do not mean to say that upon certain points there might be cases carried into the Federal courts under this bill which would not be carried under unconditional repeal; but what I do believe is, under this bill there are not likely to be nearly as many carried as there would be under unconditional repeal.

Mr. JOHNSON, of Indiana. That is a remarkable proposition to me, and I confess it surpasses my understanding.

Mr. WARNER. Mr. Chairman, of course it is impossible to go into all contingencies; the gentleman, for example, would appreciate this.

Mr. JOHNSON, of Indiana. Allow me for a minute.

Mr. WARNER. I want to finish this. For example, if we have unconditional repeal there will arise under the varying conditions of our State constitutions and laws questions which will be very much more varied and numerous than if this act is passed. I am now glad to yield to the gentleman.

Mr. JOHNSON, of Indiana. I do not care to have you yield to me now, as the question I was about to ask was pertinent to what you were saying a minute ago. The point I wish to make was that where there was unconditional repeal of the State-bank tax then the whole subject of the currency system is remitted to the States, and the State courts would have exclusive jurisdiction; that under the existing system—the national-bank system, the whole matter is placed within the control of the U. S. courts and they practically have exclusive jurisdiction; but your system as laid down by your bill necessarily involves the exercise of jurisdiction in the U. S. courts for one purpose and jurisdiction in the State courts for another purpose, therefore creating a double jurisdiction, and in that respect it is lacking in simplicity both from what would result from unconditional repeal and what now results from under the present national-banking system.

Mr. WARNER. If the gentleman will pardon me, the last sentence I have answered perhaps in a weak way before, and I will not take up time further to discuss that. As to the first two propositions he makes in regard to a State bank under unconditional repeal, and a national bank system under unconditional repeal, not merely will I recall my own suggestion and those of my friends from Missouri and Tennessee; but his own experience as a lawyer will lead him to be most prompt in admitting that our State banks have now a great part of their litigation carried on in Federal courts, and that, under the national banking system, a great part is carried on——

Mr. JOHNSON, of Indiana. You are simply, I think, begging this question. I do not believe you have seen the point. All of that which exists now comes toward the general end of the law, whereas you are engrafting by a specific provision in your bill——

Mr. WARNER. The gentleman is certainly entitled to his opinion. It is perhaps as much begging the question on his part as upon mine to assume in advance the correctness of what he believes the probabilities will be rather than what I believe they will be.

Mr. BROSIUS. Will you not accede to this proposition, that where you establish a money institution, or any other kind of an institution, and subject it to the control of both Federal jurisdiction and State jurisdiction, though it may be in separate and distinct direction, yet subjecting it in some respects to the control of both jurisdictions, you increase the complexity of that system?

Mr. WARNER. Not at all; it all depends upon the circumstances. You can conceive of State bank systems which would bring more litigation into the Federal courts than any national-bank acts we have ever had, and you can also conceive of a national-bank system—I do not think ours is peculiarly liable to objection in that regard, however—which would bring more litigation into State courts than almost any State system. The whole question depends upon whether the provisions of your bill are such as to encourage, or, on the other hand, to anticipate and obviate litigation in one or the other class of courts.

Mr. BROSIUS. Let me introduce this modification of my proposition: Other things being equal, joint jurisdiction, Federal and State, would increase the complexity?

Mr. WARNER. There is no such thing as "other things being equal," because the whole question is whether the bill is so drawn as to create and bring about litigation, or, rather, to avoid it.

Mr. JOHNSON, of Indiana. Where were the former litigations under our old State-bank system, in the State courts?

Mr. WARNER. In the State courts if the plaintiff happened to be a resident of the State, for there the State would have original jurisdiction. In the United States courts if it was anybody residing out of the State. As a matter of actual fact, suits against State banks were frequently entered through the Federal courts on behalf of people outside the States in order to avoid local jurisdiction. Not merely in those cases which were cognizable exclusively in the United States courts, but in other cases, whenever they can be removed from State courts, it is frequently done.

Mr. JOHNSON, of Indiana. The main litigation was in the State courts, however?

Mr. WARNER. I beg the gentleman's pardon. The litigation, as far as mere collection of ordinary debts against the institutions or questions of liability between two solvent institutions, was largely in the State courts, perhaps in a majority of the cases; although as a matter of fact in the latter class of cases the extension of commercial facilities has brought them more and more into the Federal courts, until now a large proportion are in the Federal courts. But in cases which bear upon the question of marshaling the assets of insolvent institutions and meeting liabilities for circulation, my limited experience is that proceedings are perhaps most frequently taken primarily in the name of some one who, being outside of the State, can carry it into the Federal courts and thereby lessen the risk of local influence.

Mr. JOHNSON, of Indiana. But all State litigation grew out of a general provision of law, and not, of course, out of the particular provision of the national law, for there was no such law.

Mr. WARNER. I accede to what I understand to be the gentlemen's contention in that regard, which, by the way, is precisely the point I made a half an hour ago.

Mr. JOHNSON, of Indiana. Let me ask you a little different question on that branch. Under the present national banking system the Comptroller may not only have an examination of the banks, report of circulation, etc., but immediately upon finding them insolvent or in danger of insolvency he may proceed in behalf of all the creditors to put them into the process of liquidation?

Mr. WARNER. Precisely.

Mr. JOHNSON, of Indiana. Under the system you propose, when he discovers its insolvency he is utterly powerless to do anything except to give publicity to the facts?

Mr. WARNER. Precisely.

Mr. JOHNSON, of Indiana. And according to that statement the settling of the affairs of the bank is left to the individual act of the creditors; there is no concerted action?

Mr. WARNER. I beg the gentleman's pardon; he is too good a lawyer not to know that the inevitable turn of affairs is that one party would sue on behalf of all the others and——

Mr. JOHNSON, of Indiana. I understand that; but in place of having some central authority, like the Comptroller, coming in and acting for all parties, it is left to the individual creditors of the bank, Tom, Dick, and Harry, to act.

Mr. WARNER. We are getting back to the old question as to whether the moment a man becomes vested with a Federal office there is thereby added to his intellect, to his integrity, and to his leisure to attend to these things.

Mr. JOHNSON, of Indiana. The only question is whether a central authority is preferable to its being scattered all over the country?

Mr. WARNER. I have no question whatever but that a proper receiver, acting under the courts upon the ground, who represents in that particular community the creditors of that institution and stockholders, will be ordinarily the better man and the local courts the more convenient tribunals.

Mr. JOHNSON, of Indiana. A receiver on the ground is appointed by the Comptroller, as I understand it?

Mr. WARNER. Sometimes.

Mr. JOHNSON, of Indiana. With full knowledge——

Mr. WARNER. I am not suggesting that the Comptroller would not attend to it fairly well.

Mr. WALKER. And generally a man familiar with the bank and all of its operations?

Mr. WARNER. That depends upon the Comptroller's appointment.

Mr. JOHNSON, of Indiana. You speak of the provisions of your bill as far as contemplated national control is concerned as purely administrative?

Mr. WARNER. Not purely.

Mr. JOHNSON, of Indiana. Largely, then? Is not your whole bill constructed upon a total and entire mistrust of State banks?

Mr. WARNER. No, sir.

Mr. JOHNSON, of Indiana. This bill, while purporting to be in the interest of State banks, is constructed upon a mistrust of State banks?

Mr. WARNER. My bill is constructed largely in the way of a concession to the conservatism of gentlemen who have the opinions of my friend from Indiana.

Mr. COX. Will you yield to me for one question just in this connection of jurisdiction, as I regard it as a very important one? Let me call to your mind this proposition: Take the State of Missouri; say this law is passed and it goes into effect; the constitution of Missouri is such that she can not legislate at all in regard to it.

Mr. WARNER. Not until she changes her constitution, as I understand.

Mr. COX. Then all the relief that Missouri would get, if she got any at all, would be through the system of national banks?

Mr. WARNER. Yes, and I may add the fact that all other States having the same authority——

Mr. COX. That being so, that the State of Missouri could get no relief except through the operations of the national bank act, then as a matter of law the State courts of Missouri would have no jurisdiction whatever?

Mr. WARNER. In that particular case, no.

Mr. COX. Now, suppose we go from the State of Missouri to the State of Tennessee, which is not prohibited by the constitution of the State, and she avails herself of the benefits of this act, then in the State of Tennessee in the same business you have got the U. S. courts, having concurrent jurisdiction, whereas in Missouri you have the Federal court alone?

Mr. WARNER. You have a certain lot of institutions in Tennessee in regard to which in most cases initial action would be in the State courts. You have a certain lot of other institutions as to which in most cases initial action would be in the Federal courts, but as to neither one of those institutions is there any complexity arising from the fact of the other's existence in the State.

Mr. COX. One more question and I will not bother you any more in regard to this question of jurisdiction. Suppose a case is presented, and the case involves a construction of jurisdiction which is granted by the State, now I ask you what court would have jurisdiction in such a case as this?

Mr. WARNER. The Federal courts, if it arose under this act.

Mr. COX. The Federal court would be construing the charter of a State, granting powers, limitations, and restrictions?

Mr. WARNER. Certainly.

Mr. COX. A charter granted by a State is an act of its legislature. Is not that legislation by the State? Now, do you mean to concede before this committee you will transfer the jurisdiction of a State court upon its own statutes over to the Federal courts?

Mr. WARNER. The Federal courts would be compelled to accept as the law governing the construction of that charter the law, either legislative or judge-made, if we may so call it, of that State.

Mr. BROSIUS. How could you mandamus through a Federal court unless there was a Federal question involved in it?

Mr. WARNER. The construction of its statutes and its laws, given by the courts of a State, would be conclusive upon the Federal courts; but it would be for the Federal courts to say whether or not the Comptroller had acted or had not acted as he was commanded to do by this act.

Mr. BROSIUS. That was not the question asked you by Mr. COX; that is not the point.

Mr. COX. Let me be understood. I will take my State, as that is easy for me to handle. Say she charters a bank under your law. A foreign note-holder comes to the conclusion that the bank is insolvent. Now he gets jurisdiction on account of his nonresidence in the Federal courts, but here is my question: The resident note-holder in the State of Tennessee brings a suit that involves the construction of the powers granted in that charter, or limitation of power. Now, I understood you to say a moment ago that the Federal courts——

Mr. WARNER. Not at all. My answer assumed your question to relate to what the Comptroller could be made to do.

Mr. COX. I see you misunderstood me.

Mr. WARNER. I said he could be mandamused.

Mr. COX. The resident note-holder brings suit over which the jurisdiction of the State court is complete?

Mr. WARNER. Certainly.

Mr. COX. Then the foreign note-holder brings his suit upon the very same question, that goes to the Federal courts?

Mr. WARNER. Yes, that quasi dual jurisdiction exists now as to the obligations of every institution or bank in the country.

Mr. COX. This is what I want to get at. If that law which you propose adopts a charter of the State of Tennessee as part of itself, as a part of the law, makes it a part of the law by act, does not that confer absolute jurisdiction as a part of an act of Congress in the Federal courts?

Mr. WARNER. It would if your supposition was true, but this act does not make this act a part of that law. It simply provides the State must have a certain law, but it does not make that law a part of this act any more than the provision of the Constitution providing for trial by jury makes every jury trial a matter for transaction in Federal courts.

Mr. COX. What courts decide whether the State has jurisdiction or not; where is the jurisdiction to determine that question?

Mr. WARNER. The particular matter, I suppose, that we were lately considering would be a question of fact to be proven in the Federal courts by the production of an authenticated copy of the law as the State has passed it.

Mr. JOHNSON, of Indiana. But it would not depend upon the construction of local courts, because——

Mr. WARNER. As far as concerns the mere fact that a statute has been passed and the wording of that statute, that would be simply a matter of proof in the ordinary manner. As to the construction of a statute, the law and decisions of the State would—unless I am mistaken, which of course is possible—be conclusive upon the courts of the United States.

Mr. JOHNSON, of Indiana. Unless there is something in conflict with the law of the United States?

Mr. WARNER. Of course.

Mr. JOHNSON, of Indiana. Suppose under your bill some State bank would apply for money to be issued to it by the Comptroller and would insist that the provision of your act requiring that the charter of a State bank shall provide for a first lien of the note-holder over the assets of the bank was provided for, and suppose the Comptroller of the Currency should deny the charter contained any such provision, the question would go before the Supreme Court of the United States?

Mr. WARNER. Precisely.

Mr. JOHNSON, of Indiana. Now, do you contend that the Supreme Court of the United States would be bound to follow the decision of the local courts, that the charter did contain that provision?

Mr. WARNER. Such is my understanding.

Mr. JOHNSON, of Indiana. If it was borne upon the face of the charter that it did not?

Mr. WARNER. The decisions of the court of last resort of a State, as I understand it, are conclusive upon the Supreme Court of the United States and upon all Federal courts as to what the statutes of that State mean.

Mr. JOHNSON, of Indiana. Right there a minute. You mean in construction of a law passed in accordance with the law of the United States?

Mr. WARNER. Yes, or any other.

The CHAIRMAN. I will say to the gentleman that the time is passing very rapidly, and I think we have heard a good deal on the question of jurisdiction.

Mr. BROSIUS. On that question of jurisdiction I was going to submit a question. You provide in your bill, if I remember it, for reports to be made to the Comptroller and examiners to be appointed by Federal authority, but it does not provide that any report is to be made to any State authority or any examination by a State authority, and from your argument I have learned that the Comptroller having had the examinations held and having received the reports——

Mr. WARNER. And published them.

Mr. BROSIUS (continuing). Can take no action predicated upon the results of these examinations?

Mr. WARNER. Except in one regard, a negative action.

Mr. BROSIUS. Why do you have reports made to the Comptroller and the examinations supervised by him when he can take no action whatever on the results?

Mr. WARNER. The gentleman asks a question which brings out a point I want to enforce as much as possible. It is not upon the arbitrary action of any Federal officer that I rely for the security of this system. It is rather upon the common sense of the American public, and the honesty of American financiers, especially when the affairs with which they have to deal are dragged out and held up in broad daylight, that we propose to rest. The object is to keep that lime light on them just the same as is done in Wall street. We do not rely there mainly upon policemen and private watchmen to keep vaults full of securities from being robbed. Every single vault stands where it can be seen from the street, and in front of it burns a bright light day and night; and any man will tell you that that is the most effectual protection you can have.

Mr. JOHNSON, of Indiana. But you do not object to a State passing laws prohibiting the robbery of these banks?

Mr. WARNER. Each State can have as many examinations as it please; it can make as many provisos as it please as to how they shall do business.

Mr. BROSIUS. Right on that point, you say the States can provide by statute; now can the State provide by statute for any examination upon which the right of that bank to circulation would depend?

Mr. WARNER. Unquestionably, it can provide for an examination, and that if the result of the examination is not such as contemplated by the State law, the authority of that bank to issue circulation shall be revoked. The Comptroller is not authorized by this act to issue currency to any institution not holding the authority of its State.

Mr. BROSIUS. I do not find anything in your bill which confers upon the State authority to make any conditions upon which that bank shall be entitled to its currency?

Mr. WARNER. The second section reads as follows:

That State banks, and State banking associations, *"when thereto authorized by the laws of the States in which they are respectively situate,"* and also national banking associations, may issue circulating notes subject to the following regulation, etc.

That authorization may be conditioned in any way that the State may devise.

Mr. JOHNSON, of Indiana. The State may impose any other additional conditions as it sees fit, and which is not in conflict with the general provisions of this bill?

Mr. WARNER. Certainly.

Mr. BROSIUS. Let me get your statement in my mind there. Do you mean primarily the State authority shall name and enact into law the conditions upon which the State banks shall receive currency from the Comptroller?

Mr. WARNER. It must have done so before they can receive it.

Mr. JOHNSON, of Indiana. Or put any other provision which it sees fit to impose upon it?

Mr. WARNER. Certainly. It can go further than that; it can make the existence of the corporation as such dependent upon the fulfillment of any condition it pleases.

Mr. JOHNSON, of Indiana. You have no objection at all to the State legislature taking such control as it sees fit of these banks; it is simply a choice of jurisdiction with you?

Mr. WARNER. Largely.

Mr. BROSIUS. You say largely choice of jurisdiction, do you not mean wholly choice of jurisdiction?

Mr. WARNER. No, sir; I do not. There are a great many other points than mere jurisdiction. I referred to some in a former hearing. While the ground principles upon which banks should be permitted to issue their notes as circulating medium are applicable in the main to the case of any civilized nation, yet when it comes to the details, even more important details, there are certain provisions which may be desirable, though not necessary, which in some localities would lead to very little inconvenience, in other cases would lead to such inconvenience as, in comparison with the uses to be subserved, would make such provisions undesirable. There are a great many respects in which, —if it is desired, as I take it we all desire, a currency should be elastic and serve in the best manner possible the people of every locality—that end will be subserved by leaving to the State or the locality the power to adjust minor details in such a way as best serves its own condition.

Mr. JOHNSON, of Indiana. You have no provision in this bill for simplifying the currency by providing for the retirement of silver certificates, gold certificates, and greenbacks.

Mr. WARNER. There is nothing of that kind in this bill. I will anticipate, perhaps, a question of the gentleman, and I will say I think it is desirable that such legislation should be had; but it is a question between a complicated currency and a complicated bill, and I have believed it easier to get through this House a somewhat simple bill than a very complicated bill intended to bring about simplicity.

Mr. WALKER. It is better to have a simple currency than a simple bill.

Mr. WARNER. My friend is entirely right. If I should for a moment think it possible to assist rather than retard even the limited relief contemplated by this bill by securing an amendment to it providing for the retirement of the greenbacks, for the absolute inhibition of the gold certificates, or for the calling in or retirement of the Sherman notes, I would be glad to go further now and take the Government out of other people's business; I should be only too glad to favor it. I fear, however, it would dump the bill.

Mr. JOHNSON, of Indiana. Is it not your belief this bill will furnish a very safe and elastic currency if by its provisions it was entirely

under national control, without repealing the State bank circulation and allowing the national banks to issue under it?

Mr. WARNER. Perhaps. But I call the attention of the gentleman to the consideration which I mentioned a few moments ago, in which, without reference to the mere question of preference between Federal and State jurisdiction as such, I believe the bill, in the shape in which I have presented it, would be more useful in its operation than in the shape suggested by the gentleman from Indiana.

Mr. COX. Before you leave that (for we are all trying to get something that is valuable), if you were to confer jurisdiction upon the national banking system, and extend the basis of its currency to include State bonds, municipal bonds, etc., then have not you reached the question of elasticity more effectually by that than you have by this?

Mr. WARNER. You have not, Mr. Chairman. The very fact that you require special investments and special handling of investments as a prerequisite to issuing currency goes to destroy elasticity. The extent to which it destroys it, or would destroy it under conditions suggested by the gentleman from Tennessee, might be perhaps less than the extent to which that elasticity is destroyed now by the very stringent provision for a certain limited class of securities which the law provides; but I will say to the gentleman from Tennessee that I can not imagine a system which would lead to more endless and more complicated and more intolerable litigation than would a system which—either by a definite provision of the original act or by an indefinite discretion given any officer, State or national—should attempt to provide for a currency based upon all these kinds of security.

Mr. JOHNSON, of Indiana. I think your safety fund is a correct method of obtaining an elastic currency, but I am afraid it would be only a safe fund in the event the whole thing was referred to national control; that is where I differ with you.

Mr. WARNER. I see.

The next paragraph relates to the safety fund. Now, as to the phraseology of that paragraph, I will not go into it in detail. It is intended to provide a very simple system for a very complicated lot of possibilities, complicated not from their nature but from their number.

It is intended to provide, first, for expenses chargeable specially to any bank. It is intended, second, to provide for general expenses chargeable to no bank in particular but properly chargeable to them all in carrying out this act, and, third, it is intended to provide a guarantee fund for the circulation. And in order to avoid what has been the objection in some systems, where the same end is sought to be attained, it is provided that this provision shall be made through an assessment, which shall be so definite in character that there can not arise any question either as to its amount whenever it is levied, or as to its limit in any one year, or in any other direction which will seriously interfere with the business calculations of banking institutions.

To that end it is provided that upon taking out the notes, no matter if the bank intends to leave them in its vault indefinitely, an assessment shall be made calling for one-half of 1 per cent on their face. It is also provided that within a certain time after the first of January in any year an assessment of one-half per cent shall be paid upon any notes, which upon that first day of January shall have been outstanding more than one year. In view of the fact that the first assessment is calculated upon notes even if they are not put out at all, it is of course possible that the net may be a little more than one-half per cent on the circulation, but it is perfectly definite. When the banks take out notes they know just how much they pay; they know if they are assessed on the first of January next it will be one-half of 1 per cent on their circulation, and that of itself is an inducement to get in circulation that which is then outstanding.

Now, it is provided that the money thus raised is to be used, to pay—first, the special expenses of the bank; second, the general expenses of the system; and third, to keep good a guarantee fund of 3 per cent upon the whole circulation. Whenever a bank is behindhand, that year it pays the one-half per cent assessment; and with that exception it is free from all assessments whatever. In other words, if there is a slight deficit in the guarantee fund, the bank pays a half per cent, then for one, two, or three years, it may be relieved from all assessments. This will amount probably to a net assessment of between a half and three-quarters per cent the first two years, and, say, about a half per cent the first six, or seven, or eight years, and after that, in my belief, the yearly average of assessment will be nominal.

Mr. BROSIUS. There is one difficulty which seems to be in the system, and I would like to get rid of it if I can; what justice is there in requiring honest banks to use their funds to protect the obligations of dishonest banks?

Mr. WARNER. If that was the main feature there would be no justification. But the object of this assessment is to float the circulation by holding before the people such a guaranty in connection with the publicity otherwise secured as shall give the notes unquestioned currency, and thereby profit the banks at the same time.

Mr. JOHNSON, of Indiana. That is one of the conditions upon which the bank can go into the banking business?

Mr. BROSIUS. If there are any better means of doing it, that is, if each bank can protect its own circulation, would not that be better?

Mr. WARNER. Precisely.

Mr. BROSIUS. Each bank protects its circulation now?

Mr. WARNER. I do not mean for one moment to suggest that any proviso, however repugnant to business principles or business convenience, by which a bank can protect its own circulation is better than any other proviso, however consonant with business principles and however proper to secure convenience——

Mr. BROSIUS. You want the United States Government to protect every bank instead of the bank protecting itself?

Mr. JOHNSON, of Indiana. As I have interrupted Mr. Warner a great deal during the discussion of this subject, I would ask that he be allowed to continue his remarks at our next meeting.

Thereupon the committee adjourned to meet on Tuesday, February 27, 1894.

COMMITTEE ON BANKING AND CURRENCY,
Tuesday, February 27, 1894.

The committee met at 10 a. m., Hon. William Springer in the chair.

Hon. JOHN DE WITT WARNER further addressed the committee on H. R. 5995, as follows:

Mr. Chairman and gentlemen of the committee: I think that at the last meeting we had practically concluded the discussion of the effect of the guaranty fund, its principle, its amount, and its sufficiency having been pretty well gone over.

The next paragraph simply provides that when for any reason, either because of misfortunes giving it no choice or because it prefers

to do so for reasons of its own, a bank shall go out of the business of issuing circulating notes, the bank itself, or its receiver or representatives, may deposit with the Treasurer of the United States an amount of lawful money equal to the amount of its then outstanding notes, and that thereupon that bank, or its representative, may do what it pleases with its assets, so far as the United States or its currency is concerned, and that the Treasurer of the United States will redeem upon presentation any notes for which such provision is made. The object is plain: the means by which it is to be obtained are simple; and the Government, being protected by an actual deposit of cash equal to the amount of the bonds registered as outstanding, is in a position to lose nothing, while the public is reassured and protected by knowing that in every such case the cash is there to meet the notes.

The next paragraphs, 9 and 10, prescribe penalties on the one hand against the officers or representatives of a bank in case they shall hypothecate its circulating notes, and on the other hand against those who shall accept such notes as collateral. The reason for these sections is this: Though I do not understand that it has of late been a common practice, it has been the case in former times, and might possibly be so again, that a bank whose credit was too poor to float notes might have such a business standing as would induce other people to advance it money on hypothecation of a greater amount of its own notes. This in itself would be an evil in bringing about conditions which would make it to the interest of those not connected in any legitimate way with the bank to put its notes into circulation at a point distant from the bank, and especially make it to their interest to keep just those notes in circulation which would be least worthy of being so kept.

Now, if the Government had no connection with these notes, it might be said that this would be an evil against which we should hardly undertake to provide by this act; but, inasmuch as this act provides for a guaranty fund to be kept in the custody of the U. S. Government, the law should provide not merely safely to keep this fund consecrated to the use for which it was intended, but should also prevent, as far as possible, illegitimate drafts upon it.

Mr. JOHNSON, of Indiana. When a bank goes out of existence, it loses the interest it had in the safety fund.

Mr. WARNER. It is thereafter not assessable.

Mr. JOHNSON, of Indiana. All that it paid in is gone?

Mr. WARNER. All it paid in is gone. It is expressly so provided.

The next paragraph is No. 11. That simply provides for the redemption of worn, mutilated, and defaced notes issued under this act. The only question is whether that object is attained by the wording of the paragraph. As to that, I have in large measure followed the corresponding legislation which has heretofore been effectual in connection with national-bank notes.

The twelfth paragraph provides that certain sections of the Revised Statutes of the United States—which I believe are in the main those referring to the counterfeiting of greenbacks, national bank notes, etc., but which may include other and less material provisions—shall be applicable to the currency issued under this act in the same degree as to the currency to provide for the safety of which they were originally enacted.

In the thirteenth paragraph the Comptroller is given definitely expressed powers covering the greater part of the duties devolving upon him by this act, and is also directed to cooperate with the institutions

affected in carrying out this act according to its true intent, and for such purpose is directed, as to all matters contemplated in the act, but the procedure in regard to which is not specially outlined, to adopt and promulgate such rules and regulations as, with the approval of the Secretary of the Treasury, seem to him to be such as best to effectuate the spirit of the act.

In order to keep the attention of Congress constantly fixed upon the extent of the discretion which it has left to the Comptroller, in order that there may not merely be an opportunity, but an incitement, to perfect this act by further details, in case it shall seem proper, the Comptroller is directed to report to each session of Congress such rules and regulations as he shall have adopted. In other words, having provided for the essential features of the administration of the currency which is contemplated, this leaves the attending to the business details in the hands of the one who, under all the circumstances, can best attend to them, not merely leaving to Congress the right to alter or amend this act, but in addition to that providing for publicity of such regulations as shall have been adopted and regular report of the same, so as to insure the watchful care of Congress.

Section 13 simply provides that no provision of the national-bank act shall be considered as repealed, unless it is necessarily abrogated by the provisions of this statute. This is not so much an attempt to perfect this act in its operations upon institutions other than national banks as an attempt to guard against the possibility, in cases where the provisions of this act do affect national banks, that they shall be so construed as to relax anything of the strictness of the national-bank act, except as necessarily required.

Mr. JOHNSON, of Indiana. I want to ask you a question about the methods of procedure when a bank is insolvent. Your bill provides that the safety fund shall be invested in securities. A bank becomes insolvent and, as I understand it, there is nothing to protect the bill holder until the concerns of the bank have been settled up, and it is ascertained what balance is coming out of the safety fund.

Mr. WARNER. You are not entirely correct in that.

Mr. JOHNSON, of Indiana. There is no payment out of the safety fund until a long time after the bank has been forced into liquidation.

Mr. WARNER. In some cases the report of the examiner would show at once that the safety fund had to be relied upon.

Mr. JOHNSON, of Indiana. Every bill-holder would necessarily know that there would be quite a long delay between the time when the bank would go into insolvency and the payment of the notes, and the effect would be to destroy the bill-holders' security.

Mr. WARNER. I do not think it would.

Mr. JOHNSON, of Indiana. Would it not leave in doubt the real value of the notes, which would depend upon how much was to be paid?

Mr. WARNER. I do not think it would.

Mr. WALKER. That is practically what the present act does.

Mr. JOHNSON, of Indiana. Every bill-holder under the present law knows that he is to be paid in full?

Mr. WARNER. In case a large number of banks, having circulation outstanding, should fail at once, under such circumstances as regards the reported amount of their assets as compared with their circulation, as raised a question as to the ability of the guarantee fund to meet the deficit—after the application of those assets, and also the assessment upon the stockholders—In such a case as that, the contingency which the gentleman suggests might possibly happen.

Mr. JOHNSON, of Indiana. Under the present law the bills are paid at once?

Mr. WARNER. So they would be here.

Mr. JOHNSON, of Indiana. I asked you whether or not, under the national-bank law the bill-holder is not paid promptly by the Government?

Mr. WARNER. The Government has no business to do it.

Mr. JOHNSON, of Indiana. The Government does do it, and the law authorizes it.

Mr. WARNER. The law authorizes the application of the bonds in the custody of the Treasury.

Mr. JOHNSON, of Indiana. Brushing aside any uncertainties, the fact is that the Government promptly redeems notes in case a bank fails.

Mr. WARNER. The notes are not presented for redemption.

Mr. JOHNSON, of Indiana. The moment they are presented for redemption the Government pays them?

Mr. WARNER. The fact is that if they were so presented the Government could not pay them.

Mr. JOHNSON, of Indiana. Let us try to get at the real point of dissimilarity between your bill and the present law. There is never the least anxiety on the part of the bill-holder about his money, because the Government holds bonds and would promptly pay him; therefore there is no inconvenience arising to him.

Mr. WARNER. That was not true in 1866 and 1867.

Mr. JOHNSON, of Indiana. Now, it seems to me that between the existing system and the one you propose there is all the difference in the world, because under the present system the bill-holder gets his money promptly on the failure of the bank, and the knowledge on the part of the bill-holder under your act that he might be subjected to some delay would affect the question.

Mr. WARNER. If the gentleman means that, until the people had been accustomed somewhat to the working of this system, there might be uneasiness on the part of some gentlemen, like the gentleman from Indiana, who would worry, and therefore send to their banks these bank notes for deposit, or remittance, or for redemption, I am inclined to think that is so. I know it was so in case of national bank notes in 1866 and 1867.

I know that at that time, upon a rumor as to a national bank, we were ordered to carefully sort out its bills. For a long time after the national-bank bills were in circulation we were mighty careful about taking them, if we could help it; and whenever we had a lot of money for deposit, we sorted out the national-bank bills in preference to the state bank bills. I have no doubt that for a year or two there would at once arise, when a state bank failed, the question at to whether or not its notes were good. I have no doubt that some people might pass them in through their banks. I have no doubt that some banks might write letters of inquiry or watch the papers for reports of the condition of banks, or look at the amount of the guarantee fund; but after a reasonable length of experience under this act there would scarcely be a possibility of there happening such a case as has been suggested by the gentleman from Indiana; and my experience under the national-bank act is my reason for believing that the experience would be the same in this case.

Mr. JOHNSON, of Indiana. Inconveniences would arise, not so much on account of failures as on account of men's necessities. If a bank

fails and the bills will not be redeemed, the holders would be exposed to loss or deprivation, or discount until the time of payment.

Mr. WARNER. I know that for the first year or two of the workings of this, or any act which might be passed—even if it were based upon bullion—until a number of institutions had failed, and until their notes had been redeemed, there would be some people who would worry. They did worry, for example, in regard to the national-bank currency at the time when that currency first began to be put into circulation, but there was no resulting loss to anybody, or even inconvenience which was worth taking into account.

Mr. JOHNSON, of Indiana. A good note in hand is not so valuable to a man as a good note which is payable at once, for he can utilize the one and he can not utilize the other, and for the same reason a bank note in the hands of a man who needs money is not so valuable as one which is payable at once.

Mr. WARNER. The difference is that the inconvenience in reference to a good note of an individual would be much greater than any inconvenience which could possibly arise even under the contingency suggested by the gentleman as to the currency. The analogy is not one of commercial paper which circulates as money, but it is one of paper circulating as currency under the conditions suggested by the gentleman. To return to often-threshed straw, we had during the months of August, September, and part of October an extraordinary issue of illegal currency all over this country.

I have made inquiry in a great many cases (and I have no doubt that the gentleman's own experience has also extended to a great many cases) where the currency was issued, sometimes by municipal corporations, sometimes by business corporations, sometimes by individuals, and sometimes by trustees of securities, which those who accepted the currency did not know anything about; but I have yet to hear of a single case where doubt in regard to the payment of such currency has kept a single dollar from circulating. I do not mean to say that you might not have gotten up a currency so obviously bad that it would not have circulated, but——

Mr. BROSIUS. But that currency was not in general circulation throughout the country.

Mr. WARNER. No; and I am glad the gentleman has made that point. That currency circulated locally because of confidence in its soundness.

The knowledge, however, upon which this confidence was based was so imperfect as to bear no comparison to the knowledge that under this act every individual in the United States would have to justify his confidence in the currency now proposed.

The CHAIRMAN. As you have referred to last year's crisis, I will ask you whether the comparison you institute was a fair one as compared with the general circulating medium. These issues which you have spoken of were gotten up for that emergency and were adequate to it; but suppose the whole amount of circulation under your bill—supposing it had been in force, and the banks had one hundred millions of circulation out under it, and there was a reserve fund in their control of three million, or 3 per cent, and that 150 of the banks failed, as they did last year, with one hundred millions capital, and one billion five hundred millions of circulation, what would have been the effect?

Mr. WARNER. In the first place it is simply unimaginable that, with a limit so liberal as 75 per cent of the capital, it should be even approximated in practice.

The CHAIRMAN. What security would the bill-holder have in that case? Nobody would know what the banks had, and they could not pay depositors?

Mr. WARNER. In the first place, your supposition is an extreme one.

The CHAIRMAN. It occurred.

Mr. WARNER. No; I beg the gentleman's pardon. If those banks had failed, the outstanding notes would not in all probability have amounted to anything like the sum supposed. Again the gentleman's suggestion that banks failed with more circulation outstanding than the capital they had may indicate the reason why they failed. And this could not happen under this bill.

I believe it is hard to imagine the probability, or even the reasonable possibility, in which under this bill a community would not feel that it was abundantly protected. One hundred and fifty banks would not fail in any one day. By the time any considerable number had failed it would have become known that their assets were far more than the circulating notes, and therefore that there would be no draft upon the guarantee fund. But the question raised by the gentleman does not go to this bill, but rather to whether the Lloyds assurance plan adopted here provides a large enough capital, and whether the charge for annual premium is large enough to make the insurance secure. If, however, the question is raised, and I am asked what would become of the currency in case the banks of this country, generally speaking, turned out to be so rotten that, in any large proportion, their total assets would not amount to 75 per cent of their capital, so that this guarantee fund would be generally drawn upon, then I must answer that it would be absolutely immaterial what laws are passed. If any community is so thoroughly demoralized that its business is in that shape there is no salvation for it.

Mr. BROSIUS. Under the present law every dollar would be liable in that extreme case.

Mr. WARNER. The gentleman is mistaken; the value of the present system would depend upon the market for Government bonds. And if he will simply recur to August or September of last year, he will, I think, agree with me that in such a crisis as that suggested by our chairman, matters would be infinitely worse than that which we passed through a few months since. Government bonds would not be marketable any more than so much waste paper. The stringency last August occurred in the face of the fact that men were offering to put up Government bonds to secure currency. The first bill brought before this committee at this Congress was pressed upon the assumption that there was no market for Government bonds unless the Government itself should make one by issue of new currency to be paid out on their deposits. If you imagine such a cataclysm as our chairman suggests, the national-bank system would collapse like a slit balloon. No banking system can bring salvation to a community broken down by its own demoralization.

Mr. COX. You have under your bill for final redemption three features—first, the safety guaranty; then the first lien upon the assets of the bank; and lastly, the liability of the stockholders of the bank. Those are the three things which secure notes of issue.

Mr. WARNER. But in different order from that suggested by you.

Mr. COX. I am not after the order. Suppose ten banks should all close up the same day. In that event what would you take hold of first under your bill with which to redeem the notes?

Mr. WARNER. The assets of the banks would be available.

Mr. COX. You would undertake to enforce, first, the lien upon the assets of the banks, and until that was accomplished and the assets ascertained, it is utterly impossible to tell what the guaranty fund would be subjected to.

Mr. WARNER. Certainly.

Mr. COX. Then, having enforced the first lien upon the assets of the bank and having found that those assets were deficient, what fund would you next go to?

Mr. WARNER. Allow me to read the provision.

Mr. COX. I want to make it quite clear while we are on the point. We have settled one proposition, and that is that on the failure of a bank the first fund to be assessed is the assets. We then have left two sources—the liability of the stockholders, and the safety fund. After you have resorted to them and there is a deficiency what fund would you next assess? Because that question leads to the main one.

Mr. WARNER. Let me read you the clause. The phraseology of the clause we are now discussing is found on page 7, line 141, and following lines, and is such as to provide that this guarantee fund shall be held for the ultimate redemption after "all other reasonable available assets" shall have been exhausted, etc. In other words, while the gentleman is entirely correct in his assumption that the ordinary assets of the bank would be first resorted to, it is not true that these would necessarily be finally exhausted before any payment could be made out of the guarantee fund. While the gentleman is right in his assumption that the liability of the stockholders is another resource, it is not true that the guarantee fund could not be drawn upon until after that resource had been entirely exhausted. The question as to what are "reasonably available" assets is one concerning which, sitting around the table here, with the circumstances of any bank before us, I fancy we would have little difference of opinion.

Mr. COX. What would you take hold of next?

Mr. WARNER. Unquestionably, the order you suggest is the proper order. The only suggestion I have in modification of it is that this act does not provide or contemplate the exhaustion of all contingencies which may arise before courts, or the final settlement of litigation which may arise, but that guarantee fund is held there—subject to such rules as the Comptroller may make and promulgate, and such as Congress may approve or change, if it pleases—to provide for the ultimate redemption of the notes after "reasonably available" assets have been exhausted.

Perhaps I ought again to recall that I believe the use of this guarantee fund to be not so much for the actual payment of the notes of a broken bank, as to serve as security put up where all the world can see it, which will prevent such a doubt existing, as to the notes of a broken bank, as shall trouble minds like that of my friend from Indiana, or shall cause banks to worry or hesitate to receive the notes.

Mr. COX. This is the principal trouble in my mind: If a bank becomes insolvent, the law has the first lien upon the assetts, and that being the primary fund to be taken, every man knows that that must become exhausted, because every interest comes in.

You as a lawyer know that, and in a case where a bank would not pay but 50 cents on the dollar there must be something else to help, and you must either resort to individual liability of the stockholders or to the safety fund. This primary fund must be first exhausted, which would probably take two to five years, and then you have got your notes outstanding, and you can not tell what amount of the individual liability clause or what amount of the safety fund you will

be compelled to intrench upon. When you have done that, would not the depositor, under your bill, have a perfect right to come in with his interest to be protected, and insist that you exhaust the safety fund before you call on him for a liability as an individual stockholder?

Mr. WARNER. No; this act provides against that, although I am frank to admit that there is one matter which should be considered and discussed, and which the remark of the gentleman has brought to my mind since he began speaking. This act provides that this guarantee fund shall be liable for ultimate redemption after all other reasonably available assets liable therefor shall have become exhausted. While the gentleman has been speaking there has occured to me a point as to which, if amendment be desirable, it may be had. The point is this: If the Comptroller should see fit, as he might in case notes were presented, to pay them out of the guarantee fund even before the assets or liability of the stockholders had been exhausted, whether, standing in the place of the note-holder, he would be entitled to receive, to make good the guarantee fund, such dribbles as might come in, which he had not considered at first as reasonably available assets. It would be easy to provide for that, if necessary; but, in my opinion, as long as this act provides for no special cancellation of these notes so redeemed, the Comptroller holding them—he and not the bank having paid them—would be substituted in equity, so that, without special provision, the guarantee fund would be made good.

Mr. COX. The depositor would be substituted for the note-holder upon the fund which he might be entitled to first. It is simply working a substitution. If the depositor objects to that, and the noteholder says, "You have a lien on the assets of the bank, and you must first exhaust that, and then you must go to us if there is any liability existing in favor of the note-holder over and above that, he has no right to hold him there. Coming back to the original question, would it not be necessary, when you instituted that sort of proceeding, to buy the notes outstanding at a discount?

Mr. WARNER. No; as I understand the gentleman, he refers to the power which is frequently exercised by courts of equity, in cases where one fund is equally available to pay either of two obligations, and another fund is available to pay only one obligation, so to marshal the assets so as to give neither fund such a priority as unnecessarily to prevent those dependent on either fund from getting its rights.

Mr. COX. It is not the law.

Mr. WARNER. Courts of equity go a great way.

Mr. COX. When there are two funds, and one is subject to two liabilities—that is, where two interests are concerned in it, and a second fund independent of that where there is only one interest——

Mr. WARNER. I have heard the statement of the gentleman. As I understand it, it does not differ materially from my own idea of the matter. But, in any case, the principle and the practice suggested are absolutely limited by the other principle, that by no administration of law can you take from any suitor before a court any jot or tittle to which he may be entitled as a matter of legal preference. It is possible that there might be a difference in opinion as to where that principle applied; but, in view of the fact that it is so generally applied, so uniformly acceded to, and even the details of carrying it out so well settled by long practice in all courts of equity, it seems to me, although the question is an interesting one, that it is academic, so far as any real trouble is concerned.

Mr. COX. If you have to go through litigation as to whether a certain fund is liable to redemption, I should say that the delay (of course it is a mere matter of opinion) would work the notes down to a discount.

Mr. JOHNSON, of Indiana. Do you concede that under your bill the safeguards are sufficient to protect the note-holder?

Mr. WARNER. You are making the suggestion I was about to make in answer to the gentleman from Tennessee. The question is as to the sufficiency of the "insurance" provided.

Mr. JOHNSON, of Indiana. Would it be possible to provide in your bill that in case of the insolvency of a bank the notes should be paid, leaving the Comptroller to reimburse the Government out of the assets?

Mr. WARNER. It would not violate the principle of the bill.

Mr. JOHNSON, of Indiana. I think if any hardship would come to the note-holder, that might be obviated by what I suggest.

Mr. WARNER. It would be subject to two objections. One objection, although wholly administrative, is this: I believe (and I think every one will concede as a matter of principle) that the current redemption should be in the hands of the banks; that the Government should be called in as little as possible, and that, as far as possible, even ultimate redemption should be left to be provided for by the banks.

The other objection is this: In case of any considerable number of banks failing, the probability of large drafts upon the guarantee fund would be so increased as to raise the question as to whether it was adequate; though it might be unquestionably sufficient as an insurance for ultimate payment under the provisions of this bill.

Mr. BROSIUS. Was it not the case under the New York safety system, that when banks failed it was found that the safety fund was small?

Mr. WARNER. That was the case about 1842, though it soon accrued sufficient to pay the notes of the banks that then failed. It must be remembered, however, that the New York fund was liable for note issues far beyond proper proportion to capital, and drawn upon at once without any attempt to realize on assets of the banks. Indeed, I believe that up to 1841, all amounts paid from the safety fund, from the time it was established before 1830, had been made good from the assets of the banks themselves. All in all, however, the safety fund was from the very beginning—right through the meanest lot of panics this country has ever suffered, at least in regard to bank-note currency—sufficient not merely for all notes legitimately outstanding, but also for all of the overissues, and for all of the vast mass of counterfeits that under those conditions had been worked off. When they came to apply the act, it was so construed—and to my mind correctly, although its author vehemently objected and claimed that it was not so meant—that the guarantee was made to serve the depositor as well; and although later on I believe this was corrected, the great depletion of the fund provided under the New York law was neither to make good the legitimate circulation, nor even to make good the illegitimate or overissue circulation, nor yet even to make good the counterfeit circulation, but, to a greater extent than was caused by either of the three other sources, to make good the loss to depositors, including the state itself.

It must be remembered, too, that the one-half per cent per annum, constituting the 3 per cent safety fund, was assessed upon the capital only of a system of banks which were permitted a circulation of from 100 per cent to 150 per cent of their capitals, and which in general lived well up to their privileges.

Mr. JOHNSON, of Indiana. That was where the number of notes of failed banks was in excess of the safety fund.

Mr. WARNER. I concede to the gentleman from Indiana, as I did to the gentleman from Tennessee, that if any considerable portion of the banks of this country failed at the same time and without assets, I do not know any plan that would help them.

Mr. JOHNSON, of Indiana. When those banks failed the safety fund was not equal to the notes, to say nothing of the depositors.

Mr. WARNER. I am not sure that that was the case even in 1842. It must be understood, however, that the only pertinency of the gentleman's suggestion is in cases where assets are assumed to be absolutely nothing, and it must be remembered that the limitation of currency in proportion to paid up capital was liberal in theory under the New York laws, and reckless in practice.

Mr. JOHNSON, of Indiana. I think there were bonds issued in those cases.

Mr. BROSIUS. A large amount of money was borrowed for the purpose.

Mr. WARNER. The safety fund finally replaced everything that had been so used.

Mr. JOHNSON, of Indiana. It seems to me, if you put all the banks under national control, and then provide that in case a bank fails the Government should apply, first, the safety fund promptly, by using that method to enforce the other provision, and I think that would be better than the one suggested in your bill. It would make it available at once.

Mr. WARNER. As regards the first suggestion, it involves a question of principle. As to the second question, it seems to me that that is a matter of expediency, and the disadvantages in the change would perhaps outweigh the advantages.

Mr. JOHNSON, of Indiana. I had in mind the note-holder. He knows the Government will promptly and immediately take hold of the assets and realize on those assets, enforce the double liability, compensate him, and replace the safety fund. The note-holder would feel that that could be done more expeditiously and certainly.

Mr. WARNER. In case it was proposed to wipe out all of our system and substitute another, there would be more force in what the gentleman suggests. If we had no currency outstanding, except such as came from this system proposed, the effect of a crisis within the first year or two after the operation of the system might exaggerate the probability of the contingency referred to by the gentleman; but, in the first place, the whole question, I think the gentleman will admit, is not that of actually redeeming the notes, but of making such provision for the redemption of the circulation as shall leave no inducement for their presentation. It, therefore, comes down to a question of apparent adequacy.

Mr. JOHNSON, of Indiana. And a question of belief upon the part of the note-holder?

Mr. WARNER. Exactly. And as the bill is not intended to displace the present currency of the national banks, and therefore leaves the currency to be provided by this bill to come gradually into use as communities shall need it, and the people shall have faith in it; and inasmuch as it is simply unthinkable that for the first three years the country will be in a large measure dependent upon this circulation, it seems to me that these circumstances minimize the gravity, if you should consider it grave at all, of the contingency against which the gentleman proposes so carefully to provide. I believe, therefore, that

we would not be justified in putting any additional obstructions upon the circulation by larger taxes upon circulation to provide a somewhat larger guaranty fund to start with—though the rate of the assessment and size of the guaranty fund to be provided thereby is one of detail rather than of principle.

Mr. JOHNSON, of Indiana. It is my opinion that this bill in its present form will not pass. If these banks were placed under the control of the National Government it would be a better way. I do not believe elasticity can be obtained with bonds; and the question, it seems to me, is whether it would not be better to compromise than to offer in this way a measure that would be defeated. I may be wrong. I have talked with a number of gentlemen about it.

Mr. WARNER. If I may make a suggestion, this matter should not be treated as a political question. We should draw bills, and I am certain—speaking for myself, and I think for the gentlemen on our side of the House—that we could so draw a bill that it would, through discussion, enable us to come to an agreement in the committee, and enable us to offer to the House a bill which would secure the support of a great portion of our colleagues of all parties. As to the details, it could be amended so as to be approved by the judgment of the House. Indeed I have in mind several respects in which details should be added to this bill; and I have no doubt many more could appropriately be suggested by others.

Mr. JOHNSON, of Indiana. A great deal of the opposition to the present national bank law is that it is claimed that the currency has no elasticity. Another objection was that we should not tax the people to pay interest upon bonds in order to have security. Your safety fund obviates this objection; but there is also a strong objection to remitting to State banks, or relaxing Government control in any way, and that would ultimately be antagonized. I would suggest whether the safety fund would not be an immense stride in curing existing evils. You admit that it would be?

Mr. WARNER. Unquestionably.

Mr. BROSIUS. The idea is to make a leading modification of the present law by a safety fund, instead of security?

Mr. JOHNSON, of Indiana. That is my idea; but I do not believe any proposition letting the thing pass over to the States, instead of being retained in the hands of the General Government, will be met with favor. I would not say it would not be done at some future time; but for the present I am afraid of it.

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TITLE